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SANTANA'S GRILL, INC.

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

ARTURO SANTANA GALLEGO

Petitioner,

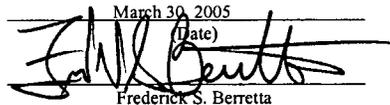
v.

SANTANA'S GRILL, INC.

Registrant.

Cancellation Nos. 92043152
(Consolidated) 92043160
92043175

I hereby certify that this correspondence and all marked attachments are being deposited with Federal Express and addressed to Trademark Trial & Appeal Board, Trademark Assistance Center, Madison East, Concourse Level, Alexandria VA, 22314 on:

March 30, 2005
(Date)

Frederick S. Berretta

**REGISTRANT'S OPPOSITION TO PETITIONER'S MOTION FOR SUMMARY
JUDGMENT AND MEMORANDUM IN SUPPORT**



03-31-2005

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Registrant Santana's Grill, Inc. ("Registrant") hereby opposes Petitioner Arturo Santana Gallego's ("Petitioner") motion for summary judgment under Rule 56(b) of the Federal Rules of Civil Procedure. This Opposition is supported by the accompanying Memorandum of Points and Authorities and the Declarations of Abelardo Santana Lee, Claudia Vallarta Santana and Frederick S. Berretta and the exhibits attached thereto all concurrently filed herewith.

I. INTRODUCTION

The Trademark Trial and Appeal Board (the "Board") should deny Petitioner's motion for summary judgment. Petitioner cannot establish as a matter of law that (1) Petitioner is the rightful owner of the marks at issue or (2) that Registrant obtained its registrations by fraud.

Petitioner is not the rightful owner of the three service marks that are the subject of this Consolidated Cancellation. As the holder of valid federal registrations in the marks, *Registrant* is the presumptive owner of the marks. Petitioner cannot rebut that presumption. Petitioner cannot establish it is a licensor of the marks at issue or that it maintains control over any of Registrant's restaurants. Indeed, there is no dispute that Petitioner does *not* control Registrant's restaurants, so Petitioner's vague assertions that he is a licensor fail. Further, Petitioner cannot assert any rights over two of the marks because Petitioner never used those marks. The undisputed facts indicate that Registrant created two of the marks at issue after it purchased its original restaurant from Petitioner.

Petitioner has no evidence to support its specious fraud allegations. Petitioner has the burden to prove that Registrant made a *knowingly* false material statement *with intent to deceive* the Trademark Office. Petitioner cannot make that showing because Registrant had a good faith belief in all of its statements to the Trademark Office. Primarily, Registrant had every belief that it was the rightful owner of the marks and that no other person had any right to use the marks at issue. As such, Petitioner cannot show that Registrant made any statements in its registrations with the intent to deceive the Trademark Office.

For all these reasons, the Board should deny Petitioner's motion. Indeed, as set forth in Registrant's motion for summary judgment, the facts merit a conclusion that *Registrant* is the

rightful owner of the marks at issue and that Registrant did not fraudulently obtain its registrations.

II. STATEMENT OF UNDISPUTED FACTS

A. The Parties And The Subject Trademarks

Registrant Santana's Grill, Inc., is a corporation formed and co-owned by husband and wife Abelardo Santana Lee and Claudia Vallarta Santana. Registrant now owns and operates or licenses six Mexican food restaurants in San Diego County, California, under the names "Santana's Mexican Grill" or "Santana's Mexican Food," and plans to continue expanding its business. Registrant is the owner of the three registered service marks that are the subject of this consolidated Cancellation Proceeding: U.S. Registration No. 2,631,458 for SANTANA'S MEXICAN FOOD...ES MUY BUENO, U.S. Registration No. 2,682,978 for SANTANA'S MEXICAN FOOD...ES MUY BUENO HOME OF FAMOUS CALIFORNIA BURRITO and Design, and U.S. Registration No. 2,634,976 for SANTANA'S MEXICAN GRILL. Exs. 1, 2 and 3 (hereinafter "the '458, '978 and '976 Registrations," respectively).¹

For over thirteen years now Registrant has been very successful in developing its Mexican food restaurant business and the goodwill associated with the subject marks. Those efforts include its careful quality control of the restaurants, uniformity in terms of the manner in which the restaurants are run (e.g., having employees wear uniform clothing bearing the marks and logos) and the menu items offered and ingredients used, and advertising for all the restaurants. Decl. of Abelardo Santana Lee, ¶ 3; Decl. of Claudia Vallarta Santana, ¶ 3. Through this approach, Registrant has developed substantial goodwill in its registered service marks for Mexican food restaurants that offer uniformly high quality food and services. Being in San Diego near several large military bases and relatively close to the border, Registrant's

¹ Unless otherwise noted all exhibits are attached to and identified in the Declarations of Abelardo Santana Lee (Registrant's President), Claudia Vallarta Santana (Registrant's Vice President and Secretary) and Frederick S. Berretta filed with this Opposition.

restaurants cater to many out-of-state tourists and military personnel, as well as to visitors from Mexico. Decl. of Abelardo Santana Lee, ¶ 3; Decl. of Claudia Vallarta Santana, ¶ 3.

Petitioner Arturo Santana Gallego is the father of Abelardo Santana Lee and started what would become the first restaurant to use the name "Santana's Mexican Food," located at 1480 Rosecrans Street in San Diego. When Petitioner originally opened at this location he used other names like "Alberto's" and "Corona's." By 1988 he started using the name "Santana's Mexican Food" at 1480 Rosecrans Street. Ex. 4. During this time Abelardo Santana Lee worked at the restaurant at 1480 Rosecrans Street. Decl. of Abelardo Santana Lee, ¶ 4. A few years later Registrant acquired this restaurant from Petitioner in a transaction completed in January of 1992. Exs. 5 and 6; Decl. of Abelardo Santana Lee, ¶ 5. Petitioner continued to own another restaurant at a remote location in Yucca Valley, San Bernardino County, California, that was also named "Santana's Mexican Food." However, the "Santana's Mexican Food" name was first used at the 1480 Rosecrans Street restaurant, and only later at the Yucca Valley location. Cancl. Petitions, '978 Reg., ¶ 3; '976 Reg. ¶ 3. Petitioner sold the Yucca Valley restaurant to a third party in 1998. Cancl. Petition, '458 Reg., ¶ 5.

After selling the Yucca Valley restaurant, Petitioner owned no restaurants. *See* Cancl. Petition, '458 Reg., ¶ 1. In fact, Petitioner has not owned or operated any restaurant since 1998 and since then Petitioner has not controlled use of the marks in any way. *See* Decl. of Abelardo Santana Lee, ¶¶ 6-7; Decl. of Claudia Vallarta Santana, ¶¶ 6-7. Petitioner brought this Cancellation Proceeding in response to a trademark infringement lawsuit filed by Registrant in the Southern District of California against several third parties including two of Petitioner's sons and the party who purchased the Yucca Valley restaurant.

B. Registrant's Properly Filed Registration Oaths

Registrant filed applications for the three subject service marks on December 5, 2001, and the three marks were all registered by February 2003 without opposition. Exs. 1, 2, and 3. The registration oaths were all signed by Claudia Vallarta Santana, Vice President and Secretary

of Registrant. The oaths provide that Registrant believes it owns the marks and believes that no other person or entity may use the marks in a confusingly similar manner. Each oath states:

... I believe Applicant to be the owner of the mark sought to be registered, or, if the application is being filed under Section 1051(b) of Title 15 of the United States Code, I believe that Applicant is entitled to use the mark in commerce and that the Applicant has to the best of my knowledge and belief, no other person, firm, corporation or association has the right to use the mark in commerce either in the identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of any other person, to cause confusion or to cause mistake, or to deceive; all statements made herein of my own knowledge are true; all statements made on information and belief are believed to be true; these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application or document or any resulting registration.

Exs. 1, 2 and 3. As set forth below, Registrant had a good faith belief in all statements made in the registration oath.

C. Registrant's Ownership Of The Subject Marks

1. Registrant's Ownership Of U.S. Registration No. 2,631,458 For SANTANA'S MEXICAN FOOD...ES MUY BUENO

Registrant Santana's Grill, Inc. was incorporated in 1998. From 1992 until its incorporation in 1998, Registrant was run as a "dba" of husband and wife partnership Abelardo Santana Lee and Claudia Vallarta Santana. References to "Registrant" herein include its predecessor business prior to incorporation. Registrant first started in the Mexican food business by acquiring the restaurant located at 1480 Rosecrans Street from Petitioner in a transaction that was completed in January 1992.² To accomplish the acquisition, Registrant first joined Petitioner as partners in the restaurant business located at 1480 Rosecrans Street on December 31, 1991, and took over the lease for the premises. Ex. 5. Then, on January 27, 1992, Petitioner

² Petitioner argues that he "gave" the restaurant at 1480 Rosecrans Street to Registrant. Petitioner's Br. at 6. Registrant contends that it paid Petitioner \$40,000 for the restaurant in the form of debt forgiveness and a part ownership in real estate in Tecate, Mexico. Decl. of Abelardo Santana Lee, ¶ 5. On this Motion, the Board must accept Registrant's version of all disputed facts.

was “deleted” from the partnership. Ex. 6. Petitioner did not retain any rights or control over the restaurant at 1480 Rosecrans Street, which after the transaction was under the complete and sole control of Registrant. Decl. of Abelardo Santana Lee, ¶ 5; Decl. of Claudia Vallarta Santana, ¶ 5.

Significantly, as part of the acquisition, Petitioner abandoned his Fictitious Business Name Statement in San Diego County for “Santana’s Mexican Food” so that Registrant could file it with the San Diego County Recorder’s Office and thereby take possession of the service mark as its own. Exs. 7 and 8. Registrant understood this to be a transfer of the mark along with the business and associated goodwill,³ and based on that has built its business to now six restaurants in San Diego County. Decl. of Abelardo Santana Lee, ¶ 6; Decl. of Claudia Vallarta Santana, ¶ 6. Petitioner did not retain any rights in the service mark with respect to the business and goodwill associated with the restaurant located at 1480 Rosecrans Street. Therefore, by virtue of the acquisition, Registrant became the sole owner of the senior user of the service mark SANTANA’S MEXICAN FOOD...ES MUY BUENO, the restaurant located at 1480 Rosecrans Street, and all the goodwill associated with that business. Ex. 1. Registrant has continuously used the service mark that is the subject of the ‘458 Registration in commerce at 1480 Rosecrans Street, at Registrant’s other restaurants, and in general advertising for all its restaurants to the present day. Decl. of Abelardo Santana Lee, ¶ 7; Decl. of Claudia Vallarta Santana, ¶ 7. Accordingly, Registrant may claim priority of use of the SANTANA’S MEXICAN FOOD...ES MUY BUENO service mark going back to its first use at the 1480 Rosecrans Street restaurant in 1988.

³ Petitioner initially argued that Abelardo Santana Lee “admit[ted] that his father never transferred him the goodwill associated with the Point Loma Restaurant.” Petitioner’s Br. at 6 (citing Dep. of Abelardo Santana Lee at 61:15-18). Faced with service of Registrant’s Rule 11 motion, Petitioner has withdrawn that statement as unsupported by the record. See Petitioner’s Notice of Errata filed herein on March 9, 2005. Even a cursory examination of the cited deposition transcript indicates Abelardo Santana Lee made no such admission.

The above facts indicate that Registrant owns the mark SANTANA'S MEXICAN FOOD...ES MUY BUENO. These facts provided the basis for Claudia Vallarta Santana's belief that Registrant was the rightful owner of the mark. Given that belief, she signed the declaration for registration of the service mark that issued as the '458 Registration. *See* Decl. of Claudia Vallarta Santana, ¶ 23.

2. Registrant's Ownership Of U.S. Registration No. 2,682,978 For SANTANA'S MEXICAN FOOD And Design

The '978 Registration is a composite word and design mark that includes the words SANTANA'S MEXICAN FOOD...ES MUY BUENO and HOME OF FAMOUS CALIFORNIA BURRITO. Ex. 2. Registrant has used this design mark in commerce in various forms, sometimes without the words HOME OF FAMOUS CALIFORNIA BURRITO and sometimes only with the words SANTANA'S MEXICAN FOOD. However, it is always used with the words SANTANA'S MEXICAN FOOD sandwiched between the distinctive upper and lower "saw tooth" patterns that are part of the design. Ex. 10; Decl. of Claudia Vallarta Santana, ¶ 8.

Claudia Vallarta Santana created this service mark in early 1993 with the assistance of Maite Agahnia of Neo Design in San Diego. Ex. 9; Decl. of Claudia Vallarta Santana, ¶ 8. Petitioner had no involvement in the creation or first use of the service mark of the '978 Registration. Decl. of Abelardo Santana Lee, ¶ 8; Decl. of Claudia Vallarta Santana, ¶ 8. Irrespective of who "invented" the California Burrito or where the burrito's true "home" may lie, there is no dispute that Registrant was the first to use the phrase HOME OF FAMOUS CALIFORNIA BURRITO as a trademark in what issued as the '978 Registration. Decl. of Abelardo Santana Lee, ¶ 9; Decl. of Claudia Vallarta Santana, ¶ 9; Ex. 2. As such, Petitioner does not, and cannot claim to be the first user of this mark.

When Registrant first applied for registration of this mark, it mistakenly indicated that the date of first use in commerce coincided with the 1988 date of first use of the words SANTANA'S MEXICAN FOOD alone, and the '978 Registration issued with that incorrect

date. Ex. 2. This was merely an honest mistake caused by a misunderstanding between Registrant and its attorney, as obviously the design mark as a whole was not created until 1993. Decl. of Claudia Vallarta Santana, ¶ 10. The mistake was corrected by the Registrant by a Request for Corrected Registration Certificate under 37 C.F.R. § 2.175 submitted to the U.S. Patent and Trademark Office (“PTO”) in October 2003. Ex. 11. Registrant has continuously used this service mark in commerce at all its restaurants and in general advertising for all its restaurants to the present day. Decl. of Claudia Vallarta Santana, ¶ 9. Accordingly, Registrant may claim priority of use of this service mark going back to its first use in 1993.

The above facts indicate that Registrant is the rightful owner of the mark SANTANA’S MEXICAN FOOD...ES MUY BUENO and HOME OF FAMOUS CALIFORNIA BURRITO. These facts also provided the basis for Claudia Vallarta Santana’s belief that Registrant was the rightful owner of the mark. On that basis, she signed the declaration for registration of this service mark that issued as the ‘978 Registration. *See* Decl. of Claudia Vallarta Santana, ¶ 23.

3. **Registrant’s Ownership Of U.S. Registration No. 2,634,976 For SANTANA’S MEXICAN GRILL**

The ‘976 Registration is a service mark for the words SANTANA’S MEXICAN GRILL. Ex. 3. The SANTANA’S MEXICAN GRILL service mark of the ‘976 Registration was created by Abelardo Santana Lee and Claudia Vallarta Santana in 1997 as part of Registrant’s overall plan to incorporate its business as “Santana’s Grill, Inc.” Decl. of Abelardo Santana Lee, ¶ 11; Decl. of Claudia Vallarta Santana, ¶ 11. Registrant planned to start using this mark at its other restaurant locations, including 1480 Rosecrans Street, 1525 Morena Boulevard, and two new locations to open at 411 Broadway in El Cajon, and 3742 Midway Drive, all in San Diego County. *Id.* This mark was first used at the restaurant located at 411 Broadway in November of 1997 because that was the first of the two new locations to open. *Id.* The restaurant at 411 Broadway was opened and set up by Registrant with the intention that it would be owned and operated by Abelardo Santana Lee’s brother, Arturo Santana Lee, as another in the growing chain of Registrant’s Mexican food restaurants. *Id.* It was always the understanding and

intention of Abelardo Santana Lee and Claudia Vallarta Santana that Arturo Santana Lee would operate the restaurant in the same manner as Registrant's other restaurants, with the same menu items, ingredients and quality. *Id.*

At this time in late 1997, Arturo Santana Lee was still an employee of Registrant. Ex. 12.⁴ Decl. of Abelardo Santana Lee, ¶ 12; Decl. of Claudia Vallarta Santana, ¶ 12. Registrant guaranteed the lease for the 411 Broadway restaurant. Ex. 13. Registrant also arranged for insurance at the 411 Broadway restaurant from Farmers Insurance Group, the company it had already been using at its other restaurants. Ex. 14. Further, Registrant arranged for various services for the 411 Broadway restaurant such as bookkeeping, banking, gas and electric, telephone, water, sewer, and waste disposal. Decl. of Abelardo Santana Lee, ¶ 12; Decl. of Claudia Vallarta Santana, ¶ 12. Moreover, when the Fictitious Business Name Statement in San Diego County for "Santana's Mexican Grill" was applied for, Registrant filled out the form for Arturo Santana Lee's signature using Registrant's original address, 2067 Cecelia Terrace in San Diego. Ex. 15; Decl. of Abelardo Santana Lee, ¶ 13; Decl. of Claudia Vallarta Santana, ¶ 13. This is the same address for Registrant found on the '458, '978 and '976 Registrations. Exs. 1, 2 and 3. Arturo Santana Lee could not do this on his own; in late 1997 he lived in Mexico and still to this day speaks little or no English. Decl. of Abelardo Santana Lee, ¶ 13; Decl. of Claudia Vallarta Santana, ¶ 13. Arturo Santana Lee therefore necessarily took direction from Registrant in all aspects of opening the restaurant at 411 Broadway.

Registrant orchestrated the entire set up and employee training necessary to open the restaurant at 411 Broadway, and instructed Arturo Santana Lee to use the "Santana's Mexican Grill" name under an implied license with the understanding that he would operate the restaurant in a manner substantially uniform to the restaurants already operated by Registrant. Decl. of Abelardo Santana Lee, ¶ 14; Decl. of Claudia Vallarta Santana, ¶ 14. Abelardo Santana Lee and

⁴ Exhibit 12 has been filed under seal because it shows employment information and social security numbers for Registrant's employees in 1997, one of which was third party Arturo Santana Lee.

Claudia Vallarta Santana worked very hard to open the restaurant at 411 Broadway and properly train the new employees, in part to help Abelardo's brother get into a successful business in the United States, and mainly because all of Registrant's restaurants could benefit by buying the same supplies and ingredients in greater quantities and at better discounts. *Id.* Arturo Santana Lee agreed to this arrangement and never indicated that he wanted to do anything different, which of course would have been unacceptable to Registrant. *Id.*

In April of 1998 Registrant incorporated as "Santana's Grill, Inc.," and by July 1998 opened its fourth restaurant at 3742 Midway Drive using the SANTANA'S MEXICAN GRILL mark. Exs. 16 and 17. With the opening of this fourth location Registrant prepared a uniform menu for all four restaurants, including the one at 411 Broadway. Ex. 18. This further evidences the intentions and understandings of all the parties involved that the 411 Broadway restaurant would be allowed to use the "Santana's Mexican Grill" name only on condition that it operate in the same manner and with the same menu as the other three restaurants in Registrant's growing chain of Mexican food restaurants. Decl. of Abelardo Santana Lee, ¶¶ 15-16; Decl. of Claudia Vallarta Santana, ¶¶ 15-16. Registrant therefore was controlling the manner of use of the mark at the 411 Broadway location by training employees, establishing the menu and recipes used, and lining up the suppliers of the ingredients, among other things. *Id.* Registrant intended to continue this oversight and quality control over the 411 Broadway restaurant because it also had three other restaurants at this time and substantial and valuable customer goodwill that it did not want to jeopardize. *Id.*

What started this dispute in part was the fact that Arturo Santana Lee apparently no longer wants to operate his restaurants in the same high quality manner as Registrant's now six other "Santana's Mexican Grill" restaurants in San Diego. However, he wants to continue using Registrant's trademark, which is causing rampant consumer confusion because Registrant's chain of restaurants has become very popular in San Diego. Decl. of Abelardo Santana Lee, ¶ 17; Decl. of Claudia Vallarta Santana, ¶ 17. Arturo Santana Lee now wants to strike out on his own, after having been completely set up in the restaurant business by Registrant, but rather than

change the name of his restaurants to "Arturo's," for example, he wants to continue enjoying the benefits of Registrant's goodwill developed over thirteen years of hard work and dedication to this business. In fact, he is still to this day using the menu created back in 1998 listing the addresses of three of *Registrant's* other restaurants. *Id.*, Ex. 18.

Although Registrant gave the July 1998 date as its first use "on or before" date when it applied for the '976 Registration, this was again due to an honest misunderstanding between Registrant and its attorney about the concept that Registrant could claim its first use through a licensee and not just by its own direct use. Decl. of Claudia Vallarta Santana, ¶ 18. Registrant claims ownership and use of the mark SANTANA'S MEXICAN GRILL to the November 1997 first use date at 411 Broadway by virtue of the fact that Registrant created the mark and licensed its use to Arturo Santana Lee (then an employee of Registrant), completely set up the restaurant at 411 Broadway to be operated as one of Registrant's chain, and the continuing direct use of the mark by Registrant itself since 1998 to the present. Decl. of Abelardo Santana Lee, ¶¶ 11-16; Decl. of Claudia Vallarta Santana, ¶¶ 11-16.

Petitioner himself did not originally claim to be the owner of the SANTANA'S MEXICAN GRILL mark. Canc'l. Petition, '976 Reg. ¶ 5. He is now claiming to be a "licensor" of the mark. In fact, Petitioner has had no involvement in the creation or use of this service mark, as he sold his only other restaurant in Yucca Valley to a third party in 1998. Canc'l. Petition, '976 Reg. ¶ 9. Petitioner has been out of the Mexican food restaurant business ever since. Decl. of Abelardo Santana Lee, ¶ 19; Decl. of Claudia Vallarta Santana, ¶ 19. Petitioner therefore has no real claim to be an owner or licensor of the SANTANA'S MEXICAN GRILL mark.

The above facts indicate that Registrant owns the mark SANTANA'S MEXICAN GRILL. These facts also provided the basis for Claudia Vallarta Santana's belief that Registrant owned the mark. On that basis Claudia Vallarta Santana signed the declaration for registration of this service mark that issued as the '976 Registration. *See* Decl. of Claudia Vallarta Santana, ¶ 23.

D. The Present Use Of The Three Subject Trademarks

Significantly, Registrant is the only party that is using the subject trademarks in a consistent manner so as to build brand recognition and goodwill. Decl. of Abelardo Santana Lee, ¶ 21; Decl. of Claudia Vallarta Santana, ¶ 21. Petitioner is not using the subject marks at all, having sold his last restaurant in 1998. Cancl. Petition, '976 Reg. ¶ 9. Petitioner apparently believes that he has the personal authority to grant anyone a "license" to use the subject trademarks despite the federal registrations. Third party Arturo Castaneda uses the subject marks at all three of his restaurants, two of which were opened after the marks registered. Cancl. Petition, '458 Reg. ¶ 5. Petitioner's other son, Pedro Santana Lee, also uses one or more of the subject marks at his own restaurant but he has no possible claim to any of the subject marks. As discussed above, Arturo Santana Lee uses the subject marks at his restaurants, but he, Arturo Castaneda and Pedro Santana Lee all do so in a haphazard and non-uniform manner because they all want to be independent. Decl. of Abelardo Santana Lee, ¶ 21; Decl. of Claudia Vallarta Santana, ¶ 21. For example, Arturo Castaneda recently failed to obtain an "A" cleanliness rating for at least one of his restaurants and threatens to tarnish the marks and Registrant's goodwill. Ex. 20. Only Registrant is using the subject marks as true "trademarks" or symbols of origin for its chain of six restaurants in a manner that will maintain and enhance the substantial customer recognition, loyalty and goodwill to which the marks have become associated. Ex. 21.

III. LEGAL STANDARDS

On summary judgment the moving party bears the initial burden of proof, and must establish that there is "no genuine issue of material fact and that [it is] entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(c)*. The evidence must be sufficient for the Board to hold that no reasonable trier of fact could find other than for the moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 1356 (1986). Summary judgment should only be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552

(1986). All reasonable inferences and doubts drawn from the record must be resolved against the moving party. Fed. R. Civ. P. 56(e).

Petitioner bears the ultimate burden of proof in this cancellation proceeding. Lanham Act §7(b), 15 U.S.C.A. §1057(b), generally provides that the registration of a mark upon the principal register shall be prima facie evidence of the validity of the registered mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark. *See Am. Home Prod. Corp. v. Johnson Chem. Co.*, 589 F.2d 103, 106 (2d Cir. 1978) (registration creates "strong presumption" of validity). Petitioner must therefore overcome this strong presumption in favor of Registrant while all reasonable inferences and doubts drawn from the record must be resolved against the Petitioner. As set forth below, a reasonable trier of fact could and should find for Registrant on this record and so the Board should deny Petitioner's summary judgment.

IV. ARGUMENT

A. Petitioner Does Not Own The Marks At Issue

1. Registrant Obtained Ownership Of The Trademark Of The '458 Registration When It Acquired Petitioner's First Restaurant And The Fictitious Business Name Registration

As set forth above, there is no dispute that Registrant acquired the restaurant at 1480 Rosecrans Street from Petitioner, and that the mark SANTANA'S MEXICAN FOOD of the '458 Registration was first used at that restaurant location. Petitioner argues instead that it transferred the physical business only. Petitioner's Br. at 6; 13-15. Therefore, the legal question regarding ownership is whether Registrant (through its predecessor) obtained the common law rights to the mark when it obtained sole ownership of the business at 1480 Rosecrans Street in January 1992. Analysis of the documents related to the transaction and the applicable law compel an affirmative answer to this question. Petitioner's unsubstantiated claims that he is still an owner or licensor of this mark cannot rebut Registrant's presumption of ownership and therefore cannot establish as a matter of law that Petitioner owns the marks.

The law is well settled that there are no rights in a trademark alone and that no rights can be transferred apart from the business with which the mark has been associated. See *J. T. McCarthy*, 2 *McCarthy on Trademarks and Unfair Competition*, § 18:2 (4th ed. 2004) (“*McCarthy*”); see also *Mister Donut of Am., Inc. v. Mr. Donut, Inc.*, 418 F.2d 838, 842 (9th Cir. 1969), *overruled in part on other grounds by Golden Door, Inc. v. Odisho*, 646 F.2d 347 (9th Cir. 1980); *Berni v. Int’l Gourmet Rest., Inc.*, 838 F.2d 642, 646 (2d Cir. 1988) (The “well-established principle” is that a “mark is not property that may be assigned ‘in gross.’”). It is therefore axiomatic that Petitioner could not transfer the business at 1480 Rosecrans Street, yet retain ownership of the mark and goodwill associated with that business. Accordingly, the law provides that:

When a business is sold as a going concern, the intent to transfer good will and trademarks to the buyer is presumed. Good will and trademarks are transferred even though not specifically mentioned in the contract of sale. That is, trademarks and the good will they symbolize are presumed to pass with the sale of a business.

2 *McCarthy*, § 18:37; see also *Naclox, Inc. v. Lee*, 231 U.S.P.Q. 395, 399 (T.T.A.B. 1986) (intent to transfer goodwill and trademarks is presumed even if the trademarks and goodwill are not expressly mentioned in a written agreement); *Sun Valley Co. v. Sun Valley Mfg. Co.*, 167 U.S.P.Q. 304, 309 (T.T.A.B. 1970); *Hi-Lo Mfg. Corp. v. Winegard Co.*, 167 U.S.P.Q. 295, 296 (T.T.A.B. 1970). An assignment in writing is not necessary to pass common law rights in a trademark. 2 *McCarthy*, § 18:4; see also *Speed Prods. Co. v. Tinnerman Prods., Inc.*, 179 F.2d 778, 782 (2d Cir. 1949); *Gaylord Bros., Inc. v. Strobel Prods. Co.*, 140 U.S.P.Q. 72, 74 (T.T.A.B. 1963); *Hi-Lo Mfg. Corp.*, 167 U.S.P.Q. at 296.

The undisputed facts regarding ownership are as follows. Registrant first joined Petitioner as partners in the restaurant business located at 1480 Rosecrans Street on December 31, 1991, then, on January 27, 1992, Petitioner was “deleted” from the partnership. Exs. 5 and 6. As part of the acquisition, Petitioner abandoned his Fictitious Business Name Statement in San Diego County for “Santana’s Mexican Food” so that Registrant could file it with the San Diego County Recorder’s Office and thereby take possession of the service mark as its own. Exs. 7 and

8. No attorneys were involved, and Registrant understood this to be a transfer of the mark along with the business and associated goodwill. Decl. of Abelardo Santana Lee, ¶ 6; Decl. of Claudia Vallarta Santana, ¶ 6. Based on this understanding, Registrant built its business to now encompass six restaurants in San Diego County. *Id.* The business at 1480 Rosecrans Street has been under the complete and sole control of Registrant since January of 1992 to the present, over thirteen years. Decl. of Abelardo Santana Lee, ¶ 7; Decl. of Claudia Vallarta Santana, ¶ 7. Thus, Registrant can establish by undisputed evidence a chain of title going back to the first user of the SANTANA'S MEXICAN FOOD mark, the business at 1480 Rosecrans Street, and so can claim rightful ownership of the mark. 2 *McCarthy*, § 18:15.

Neither party has any other documents related to the transaction, and Petitioner has no documents or even testimony indicating that he retained ownership of the mark, imposed geographic and usage restrictions on its use, or became a “licensor” of the mark exercising control over its use at 1480 Rosecrans Street.⁵ Indeed, despite his lengthy declaration, Petitioner never states that he controls any restaurant, much less those of Registrant. The statements in Petitioner’s brief that he exhibits such control are merely ungrounded attorney argument. The statements are minimally supported by the declaration of Arturo Castaneda, but that testimony is questionable at best given its vagueness and Mr. Castaneda’s obvious interest in the success of

⁵ Although Petitioner continued to own his other restaurant in Yucca Valley, there is no dispute that this restaurant was the second or junior user of the mark. Cancl. Petitions, ‘978 Reg., ¶ 3; ‘976 Reg. ¶ 3. When Petitioner sold that restaurant in 1998 to Arturo Castaneda, the purchaser obtained the junior user of the mark so is at best an “intermediate junior user” that has limited area rights because of use prior to issuance of the ‘458 Registration. *See 4 McCarthy*, § 26:44 (Intermediate junior user’s limited area defense). The Yucca Valley restaurant is in a remote location in the desert in San Bernardino County over 150 miles from San Diego so was not relevant to the business and goodwill transferred to Registrant when it acquired the 1480 Rosecrans Street restaurant. Ex. 23. Thus, to the extent Petitioner does continue to exercise control over the Yucca Valley Restaurant (a disputed issue of material fact on Petitioner’s motion), that control is irrelevant to Registrant’s ownership of the marks.

Petitioner's motion.⁶ See Petitioner's Tab 7 (Castaneda Decl.) at ¶ 5 ("Mr. Santana Gallego frequents the restaurants and provides conditions under which the restaurants can be operated"). In fact, Petitioner lives in Mexico and professed to be too old and infirm for a live deposition in this case. Exs. 24 and 25 (Jan. 25, 2005 and Feb. 11, 2005 letters).

In sum, Petitioner's argument that he is a licensor of the marks simply doesn't ring true, and Petitioner has no tangible evidence to rebut the legal presumptions that the mark was transferred along with the business at 1480 Rosecrans Street and that Registrant owns the mark. See 2 *McCarthy*, § 18:2 (and authorities cited therein). To the contrary, the undisputed facts compel a conclusion that Registrant is the rightful owner of the mark that is the subject of the '458 Registration (SANTANA'S MEXICAN FOOD).

2. Registrant Originated And Was The First To Use The Trademark Of The '978 Registration

Petitioner's claim to ownership of the '978 Registration mark SANTANA'S MEXICAN FOOD...ES MUY BUENO HOME OF FAMOUS CALIFORNIA BURRITO and Design is completely baseless. Petitioner does not and cannot challenge that Registrant created the mark and was the first user of the mark. Petitioner had absolutely no involvement in the creation or first use of the service mark of the '978 Registration in 1993. Ex. 10; Decl. of Claudia Vallarta Santana, ¶ 8.

Petitioner instead argues that he owns the mark as a consequence of his alleged ownership right to the word mark and his "inventorship" of the "California Burrito." Petitioner's Br. at 5-6. These arguments are specious at best. First, as argued above, the Board cannot conclude that Petitioner owns the mark SANTANA'S MEXICAN FOOD. Second, neither Petitioner's argued "inventorship" of a burrito nor his claim that the Yucca Valley restaurant is the "actual" home of the California Burrito have any bearing on the ownership of the mark.

⁶ Petitioner also cites to the deposition of Abelardo Santana Lee as support. That testimony, however, merely indicates that Registrant has seen Petitioner at Registrant's restaurants. Abelardo Santana Lee Dep. 46:18 – 47:24. This is another example of Petitioner's creative use of citations in its motion. See Petitioner's Notice of Errata.

Invention of a mark or the actual underlying product is irrelevant to priority of use. *See 2 McCarthy*, § 16:11 (“Unlike patent law, rights in trademarks are not gained through discovery or invention of the mark, but only through actual usage. . . . Many years ago, the U.S. Supreme Court pointed out that the ‘invention’ concept of patent law has nothing to do with trademarks.” *citing United States v. Emil Steffens*, 100 U.S. 82, 25 L. Ed. 550 (1879)).

Accordingly, the Board cannot conclude that Petitioner is the rightful owner of the mark that is the subject of the ‘978 Registration (SANTANA’S MEXICAN FOOD...ES MUY BUENO HOME OF FAMOUS CALIFORNIA BURRITO and Design). The undisputed facts compel a conclusion that Registrant owns the mark.

3. Petitioner Does Not Own The Trademark Of The ‘976 Registration, Which Was First Used By An Employee And Implied Licensee Of Registrant

The ‘976 Registration is for the SANTANA’S MEXICAN GRILL service mark. Ex. 3. Petitioner’s claim to this mark is also baseless as Petitioner had no involvement in the creation or first use of this mark. Petitioner apparently argues he has rights in the mark because it was first used by his licensee to a different mark. *See* Petitioner’s Br. at 7, 17. However, Petitioner cites no authority for the proposition that a licensor of one mark becomes an owner of a different mark first used by the licensee. Even if such a position were tenable, the facts bear out that *Registrant* impliedly licensed the SANTANA’S MEXICAN GRILL trademark to Arturo Santana Lee and Petitioner never had any rights to use the mark.

As set forth above, Registrant developed this mark in late 1997 as part of its overall plan to incorporate all of its restaurants as “Santana’s Grill, Inc.,” which happened in April 1998. Ex. 16. Registrant orchestrated the entire set up of the restaurant at 411 Broadway in the later part of 1997 with the intention that Arturo Santana Lee (the brother of Abelardo Santana Lee and at that time one of Registrant’s own employees) would own and operate it in the same manner as Registrant’s other restaurants. Ex. 12.⁷ Arturo Santana Lee would have been incapable of

⁷ Exhibit 12 has been filed under seal because it shows employment information and social security numbers for Registrant’s employees in 1997, one of which was third party Arturo Santana Lee.

accomplishing this on his own as he was still living in Mexico at the time and spoke little or no English. Decl. of Abelardo Santana Lee, ¶¶ 11-16; Decl. of Claudia Vallarta Santana, ¶¶ 11-16.

All of the documentary evidence supports Registrant's position. In late 1997 Arturo Santana Lee was still an employee of Registrant. Ex. 12. The documents establish that:

- Registrant guaranteed the lease for the 411 Broadway restaurant. Ex. 13.
- Registrant arranged for insurance for the 411 Broadway restaurant, as well as other necessary services. Ex. 14; Decl. of Abelardo Santana Lee, ¶ 12; Decl. of Claudia Vallarta Santana, ¶ 12.
- Registrant's original address (2067 Cecelia Terrace in San Diego) was used on the application for the Fictitious Business Name Statement for "Santana's Mexican Grill" at 411 Broadway. Ex. 15; Decl. of Abelardo Santana Lee, ¶ 13; Decl. of Claudia Vallarta Santana, ¶ 13.

There would have been no reason for Registrant to have done all these things if the 411 Broadway restaurant were not to be run as a licensee of *Registrant*. This documentary evidence precludes the Board from concluding Petitioner owns the mark

Based on these facts, a license from Registrant to Arturo Santana Lee to use the SANTANA'S MEXICAN GRILL mark at 411 Broadway can be implied. *See Villanova Univ. v. Villanova Alumni Educ. Found., Inc.*, 123 F. Supp. 2d 293, 308 (E.D. Pa. 2000) ("The test for whether or not an implied license existed is based solely on the objective conduct of the parties."); *Birthright v. Birthright, Inc.*, 827 F. Supp. 1114, 1134 (D.N.J. 1993) ("An implied license in fact 'arises out of the objective conduct of the parties, which a reasonable [person] would regard as indicating that an agreement has been reached.'"). Indeed, given the procedural posture, the Board must credit Registrant's assertions of an implied license as true. Such an implied license is terminable at will. *Coach House Rest., Inc. v. Coach & Six Rest., Inc.*, 934 F.2d 1551, 1563 (11th Cir. 1991).

The facts here are very similar to those presented in *Woodstock's Enter. Inc. (California) v. Woodstock's Enter. Inc. (Oregon)*, 43 U.S.P.Q.2d 1440, 1447-48 (T.T.A.B. 1997), in which

the Board dismissed the cancellation finding an implied license because registrant assisted petitioner in opening its restaurants and petitioner's restaurants were run by a former employee of registrant who was trained by registrant. As set forth above, Registrant greatly assisted Arturo Santana Lee in setting up the restaurant at 411 Broadway and training its new employees, and Arturo Santana Lee was himself an employee of Registrant. Terminating the implied license became necessary in this case because Arturo Santana Lee ultimately rejected Registrant's quality control efforts and stopped operating the restaurant at 411 Broadway in a manner consistent with Registrant's other restaurants. Decl. of Abelardo Santana Lee, ¶ 17; Decl. of Claudia Vallarta Santana, ¶ 17.

In sum, there are no facts permitting the Board to conclude that Petitioner is the rightful owner of the SANTANA'S MEXICAN GRILL mark. Moreover, Petitioner has no standing in this proceeding to assert alleged ownership rights of any third parties, such as Arturo Santana Lee. *See 3 McCarthy*, § 20:47 ("possible rights of a third party do not give petitioner standing to cancel the registration"); *Colony Foods, Inc. v. Sagemark, Ltd.*, 735 F.2d 1336, 1340 (Fed. Cir. 1984). Accordingly, the Board cannot conclude that Petitioner is the rightful owner of the mark that is the subject of the '976 Registration – SANTANA'S MEXICAN GRILL.

4. Petitioner Does Not Manage Or Control Registrant's Businesses

Petitioner argues that he continues to "control" the marks at issue. Petitioner's Br. at 13-14. As proof, Petitioner points to several "circumstances" demonstrating his continued control, including: (1) Abelardo Santana Lee previously worked at Petitioner's restaurants, (2) Abelardo knew the recipes and vendors Petitioner used, (3) Abelardo continued to use some of the same vendors, and (4) all restaurants serve the same foods, including the California Burrito.⁸ Petitioner's Br. at 6. Quite clearly, even if the above circumstances are present, they do not establish that Petitioner currently controls Registrant's restaurants. That Registrant continues to

⁸ The fifth "circumstance" listed in Petitioner's brief is "Mr. Santana Gallego continued to control the restaurants owned by Registrant." That bald assertion is unsupported by the Petitioner's citations to the record. *See* Petitioner's Br. at 6 (citing Deposition testimony of Abelardo Santana Lee at 8:6 – 23:18, 31:1 – 32:17; 46:18 – 47:13).

operate its business in a certain way or use certain suppliers does not permit an inference that Registrant runs its restaurant in that way because Petitioner controls it.

In fact, Petitioner does not control any of Registrant's restaurants. Decl. of Abelardo Santana Lee, ¶ 7; Decl. of Claudia Vallarta Santana, ¶ 7. Mr. Santana Gallego has not declared that he controls any restaurant. *See Gallego Decl. (Tabs 1 and 2 to Petitioner's Memo)*. Indeed, such control is unlikely given Petitioner's advanced age and Mexico residence. Exs. 24 and 25. Mr. Castaneda declared only that Petitioner "frequents the restaurants and provides conditions under which the restaurants can be operated using the trademark 'Santana's Mexican Food', the phrase 'Es Muy Bueno' and to serve the 'California Burrito.'"⁹ Castaneda Decl. ¶ 5 (Tab 7 to Petitioner's Memo). Mr. Castaneda's interested testimony establishes, at most, that Petitioner visits the restaurants owned by Mr. Castaneda and may have some control over *Mr. Castaneda's* restaurants. *See id.* The only evidence regarding control of *Registrant's* restaurants is Registrant's declarations that Registrant controls its own restaurants. Attorney argument¹⁰ cannot overcome that evidence and the Board must credit Registrant's evidence at this stage. For all these reasons, the Board cannot conclude that Petitioner controls Registrant's business. The undisputed record demonstrates otherwise.

B. Consumer Confusion Is Irrelevant Because Petitioner Cannot Prove It Owns Any Of The Three Marks At Issue

Petitioner argues that the registrations should be canceled because they will create consumer confusion. Petitioner's basis for this argument is unclear, but apparently Petitioner

⁹ In yet another example of ungrounded argument, Petitioner's brief states that Petitioner maintains "control over the quality and menu choices of the food served" and "control over the geographic growth of the enterprise" at the Yucca Valley Restaurant. Petitioner's Br. at 16-17; That statement is not followed by a citation to the record and is not supported by the record. Neither Petitioner nor Arturo Castaneda has declared such facts to be true.

¹⁰ Petitioner's Brief states that "Mr. Santana Gallego has continued . . . to control the quality and the menu selections offered, to ensure that the quality is the same, and to control the geographic locations of the various restaurants." Petitioner's Br. at 13. Once again, there is no evidence in the record to support that statement.

believes that because he owns the mark SANTANA'S MEXICAN FOOD, the Board should cancel the other two marks in suit because they are confusingly similar to that mark. See Petitioner's Memo at 12-13. Petitioner's syllogism is fatally flawed because it assumes that Petitioner owns the SANTANA'S MEXICAN FOOD mark. As argued above, the Board should not conclude that Petitioner owns that mark. Thus, the Board cannot conclude Petitioner owns any of the marks at issue.

C. Petitioner Cannot Prove Registrant Fraudulently Obtained The Marks

As set forth in detail above, when it filed for the registrations, Registrant had every reason to believe that it was the rightful owner of the subject trademarks, so there was no fraud. "[F]raud in trademark registration procurement, though often alleged, is seldom proven." 5 *McCarthy*, § 31:68. This case is no exception. The marks were registered without opposition with the assistance of an experienced trademark attorney.¹¹ Registrant has been using the subject trademarks for many years without objection and has built a very successful business around them. On this record, the Board cannot conclude that Registrant committed fraud. See *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 996 (9th Cir. 2001) (affidavit could not be fraudulent if the affiant had a good faith belief to claim of ownership of the mark; summary judgment of no fraud was proper); see also Decl. of Abelardo Santana Lee, ¶ 23; Decl. of Claudia Vallarta Santana, ¶ 23.

1. Fraud In Obtaining A Trademark Registration Must Be Proven By A Very High Standard Of Evidence That Petitioner Does Not Satisfy In This Case

Fraud requires proof of a knowingly false statement material to registration of the mark that was made with intent to deceive the Trademark Office. See *Metro Traffic Control, Inc. v. Shadow Network Inc.*, 104 F.3d 336, 340 (Fed. Cir. 1997) (false statements not fraudulent unless

¹¹ AnneMarie Kaiser of Knobbe, Martens, Olson & Bear, LLP represented Registrant in obtaining the subject registrations. She is a partner in the firm that specializes in intellectual property law, an experienced trademark attorney that has procured hundreds of registrations for her clients, and is also registered to practice before the United States Patent and Trademark Office.

made with the intent to mislead); *L.D. Kichler Co. v. Davoil, Inc.*, 192 F.3d 1349, 1352 (Fed. Cir. 1999). Both the courts and the Trademark Board regard charges of fraud in procurement of a trademark registration as a disfavored defense. *5 McCarthy*, § 31:68. Accordingly, fraud must be established by a very high clear and convincing standard of proof:

Fraud in a trademark cancellation is something that must be “proved to the hilt” with little or no room for speculation or surmise; considerable room for honest mistake, inadvertence, erroneous conception of rights, and negligent omission; and any doubts resolved against the charging party.

Yocum v. Covington, 216 U.S.P.Q. 210, 216 (T.T.A.B. 1982); *Bonaventure Assocs. v. Westin Hotel Co.*, 218 U.S.P.Q. 537, 540 (T.T.A.B. 1983); *5 McCarthy*, § 31:68. Proof of a false statement alone does not constitute fraud without evidence of bad intent and materiality, and a reasonable belief in the truth of even a false statement defeats a charge of fraud.

Intent to deceive must be “willful.” If it can be shown that the statement was a “false misrepresentation” occasioned by an “honest” misunderstanding, inadvertence, negligent omission or the like rather than one made with a willful intent to deceive, fraud will not be found. . . . Fraud, moreover, will not lie if it can be proven that the statement, though false, was made with a reasonable and honest belief that it was true . . . or that the false statement is not material to the issuance or maintenance of the registration.

5 McCarthy, § 31:66, citing *Smith Int’l, Inc. v. Olin Corp.*, 209 U.S.P.Q. 1033, 1043 (T.T.A.B. 1981). Based on these high requisite standards of proof and the record in this case as set forth above, Petitioner’s allegations of fraud are frivolous and certainly do not merit summary judgment in favor of Petitioner.

2. That Registrant Was Not Incorporated Until 1998 Is Not A Basis For Fraud In Claiming Earlier Use By Its Predecessor

Petitioner argues that Registrant could not claim priority dates prior to its incorporation date (April 1998). Petitioner’s Br. at 9-11, 19. This argument has no merit. The prior ownership and use of the marks by the partnership of Abelardo Santana Lee and Claudia Vallarta Santana (Registrant’s predecessor) prior to incorporation of the business inured to the benefit of the Registrant. Under Trademark Rule 2.38(a) an applicant may identify a predecessor in title as the first user of a mark, but is not required to do so as the rule is merely permissive, not

mandatory. *Gaylord Bros., Inc.*, 140 U.S.P.Q. at 74; *Airport Canteen Servs., Inc. v. Farmer's Daughter, Inc.*, 184 U.S.P.Q. 622, 628 (T.T.A.B. 1974). Obviously Registrant acquired the entire business including the trademarks and associated goodwill when Registrant's predecessor incorporated in 1998, as was intended by the transaction. Decl. of Abelardo Santana Lee, ¶¶ 5-6; Decl. of Claudia Vallarta Santana, ¶¶ 5-6. A formal written assignment to Registrant was not necessary to pass the common law rights to the marks from Registrant's predecessor to Registrant. *2 McCarthy*, § 18:4. This is not a basis for fraud.

3. Registrant's Reasonable Belief That It Owns The Subject Trademarks Precludes A Finding Of Fraud

The law is well settled that if an applicant for trademark registration holds a reasonable belief as to ownership of the trademark, there can be no fraud as a matter of law.

Where there is reasonable doubt as to who is the owner of a mark, it is not fraud to state in the application oath that one "believes himself, or the firm, corporation or association in whose behalf he makes the verification, to be the owner of the mark sought to be registered." The Trademark Board has noted that the application oath is phrased in terms of a "belief" of the applicant, such as to "preclude a definitive statement by the affiant that could be ordinarily used to support a charge of fraud." The Board concluded that if the applicant had an honest and good faith belief that it was the owner of the mark when it signed the application oath, then this is sufficient to negate any inference of fraud.

5 McCarthy, § 31:71 (citing *Kemin Indus., Inc. v. Watkins Prods., Inc.*, 192 U.S.P.Q. 327, 329-30 (T.T.A.B. 1976)); see also *Woodstock's (California)*, 43 U.S.P.Q.2d at 1443-44.

Registrant's declarations in three subject applications were the same and are expressed in terms of Registrant's belief that it is the owner of the marks.

. . . I believe Applicant to be the owner of the mark sought to be registered, or, if the application is being filed under Section 1051(b) of Title 15 of the United States Code, I believe that Applicant is entitled to use the mark in commerce and that the Applicant has to the best of my knowledge and belief, no other person, firm, corporation or association has the right to use the mark in commerce either in the identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of any other person, to cause confusion or to cause mistake, or to deceive; all statements made herein of my own knowledge are true; all statements made on information and belief are believed to be true; these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code,

and that such willful, false statements may jeopardize the validity of the application or document or any resulting registration.

Exs. 1, 2 and 3. As set forth above, the objective evidence establishes that Registrant could at least have had a reasonable belief that it was the exclusive owner when it applied for registration. Decl. of Claudia Vallarta Santana, ¶ 23. That belief precludes the Board from concluding that Registrant committed fraud.

4. There Is No Obligation To Disclose Use By Others If Registrant Has A Good Faith Belief That It Owns The Subject Trademark

Finally, Petitioner argues that Registrant committed fraud by not disclosing the use of the marks by others. These fraud allegations also fail, because there is no obligation to disclose use by others if the applicant has a good faith belief that it is the senior user. *See generally 5 McCarthy*, §§ 31:75-31:77. To establish such a fraud claim, Petitioner would have to prove by clear and convincing evidence not only that the other user had rights in the mark superior to Registrant, but also that Registrant knew that the other user had rights superior to Registrant's and intended to procure a registration to which Registrant was not entitled. *5 McCarthy*, § 31:75, *citing Ohio State Univ. v. Ohio Univ.*, 51 U.S.P.Q.2d 1289, 1293 (T.T.A.B. 1999).

A good faith belief that Registrant has superior rights to the marks again defeats any claim of fraud, even with respect to any junior users who may have limited common law rights in certain areas:

If applicant has a good faith belief that it is the senior user, then the oath cannot be fraudulent. Any alleged failure to disclose use by junior users is irrelevant and could not be material to the grant of a federal registration. In the absence of a court holding or a concurrent use proceeding, the senior user is entitled to an unrestricted federal registration notwithstanding the existence of junior users who might have common law rights of use in certain parts of the United States. That is, the signing of the oath and non-disclosure of believed junior users is not material to the grant of a federal registration. If such use by others was disclosed to the PTO examiner, it would not affect the grant of a registration. Therefore, a prior user has no duty to disclose to the PTO the subsequent use of others.

5 McCarthy, § 31:77, *citing, among other authorities, Giant Food, Inc. v. Malone & Hyde, Inc.*, 522 F.2d 1386, 1394 (C.C.P.A. 1975); *Citibank, N.A. v. Citibanc Group, Inc.*, 215 U.S.P.Q. 884, 901 (N.D. Ala. 1982), *aff'd*, 724 F.2d 1540 (11th Cir. Ala. 1984) (common law rights of junior

users need not be disclosed: their rights are not material to registration to the senior user); *Capital Speakers, Inc. v. Capital Speakers Club*, 41 U.S.P.Q.2d 1030, 1033 (T.T.A.B. 1996) (“As the prior user, respondent was under no obligation to disclose to the PTO petitioner’s subsequent use when respondent applied to register its mark . . .”).

As set forth above, the evidence establishes that Registrant had a reasonable belief that it was the senior user of the subject marks. Accordingly, the Board should deny Petitioner’s motion for summary judgment.

V. CONCLUSION

Based on the foregoing, the Board is respectfully requested to deny Petitioner’s Motion for Summary Judgment in its entirety.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 30, 2005

By: 
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SANTANA’S GRILL, INC.

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **REGISTRANT'S OPPOSITION TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF SUPPORT** and **CONFIDENTIAL DECLARATION OF CLAUDIA VALLARTA SANTANA IN SUPPORT OF REGISTRANT'S OPPOSITION TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT WITH EXHIBIT 12 (FILED UNDER SEAL)** upon Petitioner's counsel by placing it in a sealed envelope, via Federal Express, postage prepaid, on March 30, 2005, addressed as follows:

M. Cris Armenta, Esq.
VAN ETTEN SUZUMOTO & BECKET LLP
1620-26th Street, Suite 6000 North
Santa Monica, CA 90404


Kera Harkins

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TAB A

LIST OF EVIDENCE IN SUPPORT OF REGISTRANT'S
OPPOSITION TO PETITIONER'S MOTION FOR
SUMMARY JUDGMENT

**EVIDENCE IN SUPPORT OF REGISTRANT'S OPPOSITION TO PETITIONER'S
MOTION FOR SUMMARY JUDGMENT**

- Tab A List of Evidence in Support of Registrant's Motion
- Tab B Declaration of Abelardo Santana Lee
- Tab C Declaration of Claudia Vallarta Santana
- Tab D Declaration of Frederick S. Berretta
- Tab E Exhibits 1 through 25
- Exhibit 1 U.S. Service Mark Registration No. 2,631,458 for SANTANA'S MEXICAN FOOD . . . ES MUY BUENO ("the '458 Registration") and associated application.
- Exhibit 2 U.S. Service Mark Registration No. 2,682,978 for SANTANA'S MEXICAN FOOD . . . ES MUY BUENO HOME OF FAMOUS CALIFORNIA BURRITO and Design ("the '978 Registration") and associated application.
- Exhibit 3 U.S. Service Mark Registration No. 2,634,976 for SANTANA'S MEXICAN GRILL ("the '976 Registration") and associated application.
- Exhibit 4 Fictitious Business Name Statement filed by Petitioner in San Diego County in 1988 for SANTANA'S MEXICAN FOOD.
- Exhibit 5 Report of Change of Ownership of restaurant at 1480 Rosecrans Street in San Diego filed December 31, 1991 (adding Abelardo Santana Lee and Claudia Vallarta Santana as partners); and Letter Agreement dated October 11, 1991 to take over the lease.
- Exhibit 6 Report of Change of Ownership of restaurant at 1480 Rosecrans Street in San Diego filed January 27, 1992 (deleting Petitioner Arturo Santana Gallego).
- Exhibit 7 Statement of Abandonment of Use of Fictitious Business Name filed by Petitioner in San Diego County on January 9, 1992 (abandoning SANTANA'S MEXICAN FOOD).
- Exhibit 8 Fictitious Business Name Statement filed by Abelardo Santana Lee and Claudia Vallarta Santana in San Diego County on January 9, 1992 (adopting SANTANA'S MEXICAN FOOD).
- Exhibit 9 Letter from Maite B. Agahnia of NEO DESIGN dated September 10, 2003, explaining her role in assisting Claudia Vallarta Santana with design of '978 registration.

- Exhibit 10 Examples of Registrant's use of '978 Registration service mark.
- Exhibit 11 Registrant's Request for Corrected Registration Certificate for the '978 Registration, submitted October 20, 2003.
- Exhibit 12 Arturo Santana Lee's 1997 W-2 Wage and Tax Statement and Registrant's Quarterly Base Wage Report for all employees in 1997 showing Arturo Santana Lee as an employee of Registrant in the third and fourth quarters of 1997. **(Filed separately under seal because it includes employee social security numbers).**
- Exhibit 13 Guaranty of Lease for 411 Broadway restaurant executed by Abelardo Santana Lee and Claudia Vallarta Santana on November 21, 1997.
- Exhibit 14 Insurance policy documents showing that Registrant arranged for insurance with Farmers Insurance Group for 411 Broadway restaurant opened in December of 1997.
- Exhibit 15 Fictitious Business Name Statement filed on behalf of Arturo Santana Lee in San Diego County on December 17, 1997, for SANTANA'S MEXICAN GRILL.
- Exhibit 16 Incorporation documents for Registrant Santana's Grill, Inc. dated April 3, 1998, and showing its address at 2067 Cecilia Terrace in San Diego.
- Exhibit 17 Fictitious Business Name Statements filed in San Diego County in March and April of 1998 for SANTANA'S MEXICAN GRILL at Registrant's 3742 Midway Drive restaurant.
- Exhibit 18 Menu created by Registrant in 1998 for four restaurants using SANTANA'S MEXICAN GRILL service mark, including licensee at 411 Broadway and Registrant's three other restaurants at that time.
- Exhibit 19 Yellow pages advertisement and photograph of restaurant at 73680 Sun Valley in 29 Palms showing Arturo Castaneda's unauthorized use of SANTANA'S MEXICAN GRILL.
- Exhibit 20 Report from San Bernardino County Department of Public Health showing Arturo Castaneda's restaurant at 56547 29 Palms Highway in Yucca Valley obtaining only a "B" cleanliness rating after inspections on November 16, 2004 and January 3, 2005.
- Exhibit 21 Photographs of Registrant's six restaurants and website advertising.
- Exhibit 22 Maps showing locations of Registrant's restaurants at 1480 Rosecrans Street and at 3742 Midway Drive in San Diego in relation to San Diego International Airport, U.S. military bases and Cabrillo National Monument.

- Exhibit 23 Map showing driving directions and distance from San Diego to Yucca Valley, California.
- Exhibit 24 Letter from M. Cris Armenta of VAN ETTEN SUZUMOTO & BECKET LLP dated January 25, 2005 stating that Petitioner decided to not appear voluntary for a deposition in the United States in part because he is over seventy years old and is not well.
- Exhibit 25 Letter from M. Cris Armenta of VAN ETTEN SUZUMOTO & BECKET LLP dated February 11, 2005 stating in part that Petitioner is a man of substantial years with very limited ability to communicate in English.

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TAB B

DECLARATION OF ABELARDO SANTANA LEE

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Attorneys for Registrant
SANTANA'S GRILL, INC.

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

ARTURO SANTANA GALLEGO,

Petitioner,

v.

SANTANA'S GRILL, INC.

Registrant.

Cancellation Nos. 92043152
(Consolidated) 92043160
92043175

DECLARATION OF ABELARDO SANTANA LEE IN SUPPORT OF
REGISTRANT'S OPPOSITION TO PETITIONER'S MOTION FOR SUMMARY
JUDGMENT

I, Abelardo Santana Lee, hereby declare and state as follows:

1. I am the President of Registrant Santana's Grill, Inc., and I have always handled the basic operations of the restaurants we operate, including both before and after Registrant's incorporation in April of 1998. When I refer to "Registrant" in this declaration, I mean Santana's Grill, Inc. or its predecessor which was a business owned by me and my wife Claudia Vallarta Santana in an equal partnership. I am also the son of Petitioner Arturo Santana Gallego, and I am very familiar with his activities over the years with respect to the restaurant business, especially after my wife and I purchased Petitioner's first restaurant at 1480 Rosecrans Street in 1992.

2. Registrant Santana's Grill, Inc., is a corporation formed and co-owned by me and my wife Claudia Vallarta Santana. Registrant now owns and operates or licenses six Mexican food restaurants in San Diego County, California, under the names "Santana's Mexican Grill" or "Santana's Mexican Food," and plans to continue expanding its business. Registrant is the owner of the three registered service marks that are the subject of this consolidated Cancellation Proceeding: U.S. Registration No. 2,631,458 for SANTANA'S MEXICAN FOOD...ES MUY BUENO, U.S. Registration No. 2,682,978 for SANTANA'S MEXICAN FOOD...ES MUY BUENO HOME OF FAMOUS CALIFORNIA BURRITO and Design, and U.S. Registration No. 2,634,976 for SANTANA'S MEXICAN GRILL. Exhibits. 1, 2 and 3 attached hereto (hereinafter "the '458, '978 and '976 Registrations," respectively).

3. For over thirteen years now Registrant has been very successful in developing its Mexican food restaurant business and the goodwill associated with the subject marks. Those efforts include careful quality control of the restaurants, uniformity in terms of the manner in which the restaurants are run (e.g., having employees wear uniform clothing bearing the marks and logos) and the menu items offered and ingredients used, and advertising for all the restaurants. Through this approach, Registrant has developed substantial goodwill in its registered service marks for Mexican food restaurants that offer uniformly high quality food and services. Being in San Diego near several large military bases and relatively close to the border,

Registrant's restaurants cater to many out-of-state tourists and military personnel, as well as to visitors from Mexico.

4. Petitioner Arturo Santana Gallego is my father and started what would become the first restaurant to use the name "Santana's Mexican Food," located at 1480 Rosecrans Street in San Diego. When Petitioner originally opened at this location he used other names like "Alberto's" and "Corona's." By 1988 he started using the name "Santana's Mexican Food" first at 1480 Rosecrans Street. Exhibit 4 is a true and correct copy of a Fictitious Business Name Statement filed by Petitioner in San Diego County in 1988 for SANTANA'S MEXICAN FOOD. I worked at the 1480 Rosecrans Street restaurant during this time.

5. Registrant first started in the Mexican food business by acquiring the restaurant located at 1480 Rosecrans Street in San Diego from Petitioner in a transaction that was completed in January 1992. In exchange for the restaurant, I gave Petitioner an interest in an apartment in Tecate, Mexico worth about \$20,000, and forgave a debt he owed me also of about \$20,000. In order to accomplish the acquisition, my wife and I first joined Petitioner as partners in the restaurant business located at 1480 Rosecrans Street on December 31, 1991, and took over the lease for the premises. Exhibit 5 are true and correct copies of a Report of Change of Ownership of restaurant at 1480 Rosecrans Street in San Diego filed December 31, 1991 (adding Abelardo Santana Lee and Claudia Vallarta Santana as partners), and a Letter Agreement dated October 11, 1991 to take over the lease. Then, on January 27, 1992, Petitioner was "deleted" from the partnership. Exhibit 6 is a true and correct copy of a Report of Change of Ownership of restaurant at 1480 Rosecrans Street in San Diego filed January 27, 1992 (deleting Petitioner Arturo Santana Gallego). Petitioner did not retain any rights or control over the restaurant at 1480 Rosecrans Street, which after the transaction was under the complete and sole control of me and my wife.

6. As part of the acquisition, Petitioner abandoned his Fictitious Business Name Statement in San Diego County for "Santana's Mexican Food" so that Registrant could file it with the San Diego County Recorder's Office and thereby take possession of the service mark as

its own. Exhibit 7 is a true and correct copy of a Statement of Abandonment of Use of Fictitious Business Name filed by Petitioner in San Diego County on January 9, 1992 (abandoning SANTANA'S MEXICAN FOOD). Exhibit 8 is a true and correct copy of a Fictitious Business Name Statement filed by Abelardo Santana Lee and Claudia Vallarta Santana in San Diego County on January 9, 1992 (adopting SANTANA'S MEXICAN FOOD). We did not use any attorneys for this transaction. Although Petitioner and I did not specifically discuss "trademarks" or "goodwill," I understood this transaction to be a transfer of the service mark along with the business and associated goodwill, and based on that my wife and I have built our business to now six restaurants in San Diego County. Petitioner never said anything to me about him retaining any rights in the service mark with respect to the business and goodwill associated with the restaurant located at 1480 Rosecrans Street. We are not and have never been a "licensee" of Petitioner, and he has no control over any aspect of our business.

7. After we purchased the restaurant at 1480 Rosecrans Street, Petitioner continued to own another restaurant at a remote location in Yucca Valley, San Bernardino County, California, that was also named "Santana's Mexican Food." However, the "Santana's Mexican Food" name was first used at the 1480 Rosecrans Street restaurant, and only later at the Yucca Valley location. Petitioner did not operate the Yucca Valley restaurant or even spend much time there. To the best of my knowledge and recollection, from 1989 to 1996 the Yucca Valley restaurant was run by Servando and Blanca Padilla, who are cousins of Petitioner. From 1996 until it was sold, the Yucca Valley restaurant was run by Sergio Valdez and his wife Ona Preciado Ruvalcaba. The Yucca Valley restaurant is in a remote location in the desert in San Bernardino County over 150 miles from San Diego. Exhibit 23 is a true and correct copy of a map showing driving directions and distance from San Diego to Yucca Valley, California. Petitioner eventually sold the Yucca Valley restaurant to Arturo Castaneda 1998 and basically retired. To my knowledge he has been out of the restaurant business ever since, and has not been exercising any type of quality control or supervision over any restaurants. He has never controlled or supervised the operations of Registrant's restaurants. I have always done that

myself. We have continuously used the SANTANA'S MEXICAN FOOD service mark that is the subject of the '458 Registration in commerce at 1480 Rosecrans Street, at Registrant's other restaurants, and in general advertising for all our restaurants to the present day. When my wife, Claudia Vallarta Santana, signed the declaration for registration of this service mark we both understood and believed that we owned it, and we still believe that we own this service mark.

8. In early 1993 my wife, with the assistance of Maite Agahnia of Neo Design in San Diego, created the service mark that includes the words SANTANA'S MEXICAN FOOD...ES MUY BUENO HOME OF FAMOUS CALIFORNIA BURRITO and Design that is shown in the '978 Registration. Exhibit 9 is a true and correct copy of a letter from Maite Agahnia of NEO DESIGN dated September 10, 2003, explaining her role in assisting Claudia Vallarta Santana with design of '978 Registration. We have used this service mark in commerce in various forms, sometimes without the words HOME OF FAMOUS CALIFORNIA BURRITO and sometimes only with the words SANTANA'S MEXICAN FOOD. However, it is always used with the words SANTANA'S MEXICAN FOOD sandwiched between the distinctive upper and lower "saw tooth" patterns that are part of the design. Exhibit 10 is a true and correct copy of various examples of Registrant's use of the '978 Registration service mark. Petitioner had absolutely no involvement in the creation or first use of the service mark of the '978 Registration.

9. I understand that Petitioner claims to have "invented" the "California Burrito." I tend to doubt this because I recall that name being used by others in the Mexican food business, but I know Petitioner never used the phrase HOME OF FAMOUS CALIFORNIA BURRITO that is part of this service mark. In any event, by 1993 when we created this mark and first starting using it we were making our own version of the "California Burrito" and we were the first to use the phrase HOME OF FAMOUS CALIFORNIA BURRITO as part of a service mark. Exhibit 2. Registrant has continuously used this service mark in commerce at all its restaurants and in general advertising for all its restaurants to the present day.

10. I understand that when we first applied for registration of this mark, my wife mistakenly indicated that the date of first use in commerce coincided with the 1988 date of first use of the words SANTANA'S MEXICAN FOOD alone, and the '978 Registration issued with that incorrect date. Exhibit 2. This was merely an honest mistake caused by a misunderstanding between my wife and our attorney, who was new to our business and was not familiar with all the history of our business. As discussed above, the service mark as a whole was not created until 1993. I understand that this mistake was corrected by a Request for Corrected Registration Certificate that our attorney submitted to the Trademark Office in October of 2003. Exhibit 11 is a true and correct copy of Registrant's Request for Corrected Registration Certificate for the '978 Registration, submitted October 20, 2003.

11. The SANTANA'S MEXICAN GRILL service mark of the '976 Registration was created by my wife and I in 1997 as part of our overall plan to incorporate our business as "Santana's Grill, Inc." Exhibit 3. Our plan was to start using this mark at our other restaurant locations, including 1480 Rosecrans Street, 1525 Morena Boulevard, and two new locations to open at 411 Broadway in El Cajon, and 3742 Midway Drive, all in San Diego County. This mark was first used at the restaurant located at 411 Broadway in November of 1997 because that was the first of the two new locations to open. The restaurant at 411 Broadway was opened and set up by me and my wife with the intention that it would be owned and operated by my brother, Arturo Santana Lee, as another in our growing chain of Registrant's Mexican food restaurants. It was always our understanding and intention that my brother would operate the restaurant in the same manner as our other restaurants, with the same menu items, ingredients and quality.

12. At this time in the second half of 1997, my brother Arturo Santana Lee was still our employee and we trained him in the business. Exhibit 12 is a true and correct copy of Arturo Santana Lee's 1997 W-2 Wage and Tax Statement and Registrant's Quarterly Base Wage Report for all employees in 1997 showing Arturo Santana Lee as an employee of Registrant in the third

and fourth quarters of 1997.¹ To get the restaurant at 411 Broadway started, my wife and I personally guaranteed the lease for my brother. Exhibit 13 is a true and correct copy of a Guaranty of Lease for the 411 Broadway restaurant executed by Abelardo Santana Lee and Claudia Vallarta Santana on November 21, 1997. We also arranged for insurance at the 411 Broadway restaurant from Farmers Insurance Group, the company we had already been using at our other restaurants. Exhibit 14 is a true and correct copy of insurance documents showing that Registrant arranged for insurance at the 411 Broadway restaurant from Farmers Insurance Group. My wife also arranged for other services for the 411 Broadway restaurant, including bookkeeping, banking and payroll, insurance, gas and electric, telephone, water, sewer, and waste disposal. My wife put these services in Arturo Santana Lee's name since he would be the owner of the restaurant and responsible for paying the bills.

13. My wife also prepared the form for the Fictitious Business Name Statement in San Diego County for "Santana's Mexican Grill" for Arturo Santana Lee's signature using our business address at that time, 2067 Cecelia Terrace in San Diego. Exhibit 15 is a true and correct copy of a Fictitious Business Name Statement filed on behalf of Arturo Santana Lee in San Diego County on December 17, 1997, for SANTANA'S MEXICAN GRILL. The Fictitious Business Name Statement was put in my brother's name at that location because he was going to be the owner of that restaurant, not because we intended him to own the service mark. My brother, Arturo Santana Lee, could not have set up the new restaurant on his own. In late 1997 he lived in Mexico and still to this day speaks little or no English.

14. My wife and I arranged the entire set up and employee training necessary to open the restaurant at 411 Broadway, and instructed Arturo Santana Lee to use the "Santana's Mexican Grill" name with the understanding that he would operate the restaurant in a manner substantially uniform to our other restaurants. My wife and I worked very hard to open the

¹ Exhibit 12 is attached to a Confidential Declaration of Claudia Vallarta Santana and has been filed under seal because it shows employment information and social security numbers for our employees in 1997, one of which was my brother Arturo Santana Lee.

restaurant at 411 Broadway and properly train the new employees, in part to help my brother get started in a successful business in the United States, and mainly because all of our restaurants could benefit by buying the same supplies and ingredients in greater quantities and at better discounts. My brother, Arturo Santana Lee, understood this and agreed to this arrangement. He never indicated that he wanted to do anything different, which of course would have been unacceptable to me and my wife. We would not have done all this work for my brother if he was not planning to operate his restaurant in the same manner as our other restaurants.

15. In April of 1998 Registrant incorporated as "Santana's Grill, Inc.," and by July 1998 we opened our fourth restaurant at 3742 Midway Drive using the SANTANA'S MEXICAN GRILL mark. Exhibit 16 is a true and correct copy of incorporation documents for Registrant Santana's Grill, Inc. dated April 3, 1998, and showing its address at 2067 Cecilia Terrace in San Diego. Exhibit 17 is a true and correct copy of Fictitious Business Name Statements filed in San Diego County in March and April of 1998 for SANTANA'S MEXICAN GRILL at Registrant's 3742 Midway Drive restaurant. This was all part of our original plan to use this mark at all of our restaurant locations.

16. With the opening of this fourth location at 3742 Midway Drive, we prepared a uniform menu for all four restaurants, including the one at 411 Broadway. Exhibit 18 is a true and correct copy of a menu created by Registrant in 1998 for our four restaurants using the SANTANA'S MEXICAN GRILL service mark, including our licensee at 411 Broadway and our three other restaurants at that time. This further shows the intentions and understandings of all the parties involved that the 411 Broadway restaurant would be allowed to use the "Santana's Mexican Grill" name only on condition that it operate in the same manner and with the same menu as the other three restaurants in our growing chain of Mexican food restaurants. My wife and I controlled the manner of use of this service mark at the 411 Broadway location by training employees, establishing the menu and recipes used, and lining up the suppliers of the ingredients, among other things. My wife and I intended to continue this oversight and quality control over

the 411 Broadway restaurant because we also had three other restaurants at this time and substantial and valuable customer goodwill that we did not want to jeopardize.

17. What unfortunately started this dispute in part was the fact that my brother, Arturo Santana Lee, apparently no longer wants to operate his restaurants in the same high quality manner as Registrant's now six other "Santana's Mexican Grill" restaurants in San Diego. However, he wants to continue using our trademarks, which is causing a great deal of consumer confusion because our chain of restaurants has become very popular in San Diego. My brother, Arturo Santana Lee, now wants to strike out on his own, after having been completely set up in the restaurant business by me and my wife, but rather than change the name of his restaurants to "Arturo's," for example, he wants to continue enjoying the benefits of our goodwill developed over thirteen years of hard work and dedication to this business. In fact, he is still to this day using the menu created back in 1998 listing the addresses of the three other restaurants we owned at that time, and still own today. Exhibit 18. Terminating the license to use our service marks at 411 Broadway became necessary because Arturo Santana Lee ultimately rejected our quality control efforts and stopped operating the restaurant at 411 Broadway in a manner consistent with our other restaurants.

18. When we applied for registration of the SANTANA'S MEXICAN GRILL service mark I understand that my wife gave our attorney the July 1998 date as its first use "on or before" date. This was due to an honest misunderstanding about the concept that Registrant could claim its first use through a licensee such as 411 Broadway, and not just by its own direct use that started at 3742 Midway Drive in July of 1998. Our attorney was not aware of these facts about the 411 Broadway restaurant when the application was prepared. As discussed above, we believe we own this service mark because we created the mark and licensed its use to Arturo Santana Lee (who was then our employee), completely set up the restaurant at 411 Broadway to be operated as one of our chain, and have continued direct use of the mark from 1998 to the present.

19. I understand that Petitioner recently filed a summary judgment motion and he now claims to be an "owner" and "licensor" of the SANTANA'S MEXICAN GRILL mark. In fact, Petitioner has had no involvement in the creation or use of this service mark, as he sold his only other restaurant in Yucca Valley to a third party, Arturo Castaneda, in 1998. Petitioner has been out of the Mexican food restaurant business ever since and basically retired. I am not aware of him doing any type of quality control over any restaurants.

20. I am aware that the person who bought the Yucca Valley restaurant from Petitioner in 1998, Arturo Castaneda, has been using the SANTANA'S MEXICAN GRILL mark for his restaurants even though he has absolutely no right to do so. Exhibit 19 is a true and correct copy of a Yellow Pages advertisement and a photograph of the restaurant at 73680 Sun Valley in 29 Palms showing Arturo Castaneda's unauthorized use of SANTANA'S MEXICAN GRILL. This is a cause of serious concern for Registrant because Arturo Castaneda has recently failed to obtain an "A" cleanliness rating from the San Bernardino County Department of Public Health at the Yucca Valley restaurant and so threatens to tarnish Registrant's trademarks and undermine the goodwill in the marks painstakingly developed over our thirteen years of effort. Exhibit 20 is a true and correct copy of a Report from the San Bernardino County Department of Public Health showing Arturo Castaneda's restaurant at 56547 29 Palms Highway in Yucca Valley obtaining only a "B" cleanliness rating after inspections on November 16, 2004 and January 3, 2005. This was yet another reason why Registrant was compelled to bring a lawsuit in District Court to protect its valuable goodwill and trademarks, because the third parties that we originally were forced to sue and who have now aligned themselves with Petitioner as his supposed "licensees" operate their restaurants in a low quality, haphazard and sometimes unsanitary manner.

21. I believe that Registrant is the only party that is using the three subject trademarks at its six restaurant locations in a consistent manner so as to build more brand recognition and goodwill. Petitioner is not using the subject marks at all, having sold his last restaurant in 1998. The third parties Registrant was forced to sue in District Court, Arturo Castaneda, Arturo

Santana Lee and Pedro Santana Lee, now all use these marks in a haphazard and non-uniform manner because they all want to be independent. As discussed above, Arturo Castaneda's failure to obtain an "A" cleanliness rating for at least one of his restaurants threatens to tarnish and damage the marks and Registrant's valuable goodwill. Only Registrant is using the subject marks as true "trademarks" or symbols of origin for its chain of six restaurants in a manner that will maintain and enhance the substantial customer recognition, loyalty and goodwill to which the marks have become associated. Exhibit 21 is a true and correct copy of photographs of Registrant's six restaurants and our website advertising.

22. Registrant's restaurants are located in San Diego, one of the most popular tourist destinations in the United States. Registrant's restaurant at 1480 Rosecrans Street, for example, is located within two miles of the San Diego International Airport, the United States Naval Training Center, and Fort Rosecrans Military Reservation, as well as being on the way to Cabrillo National Monument, a popular tourist location at the tip of Point Loma. Exhibit 22 is a true and correct copy of maps showing the locations of Registrant's restaurants at 1480 Rosecrans Street and at 3742 Midway Drive in San Diego in relation to San Diego International Airport, several U.S. military bases, and Cabrillo National Monument. Registrant's restaurant at 3742 Midway Drive is located in the same area. Exhibit 22. As a result, many of Registrants customers have included out-of-state tourists and military personnel stationed in San Diego.

23. I understand that my wife Claudia Vallarta Santana signed the following declaration when we applied for the three service mark registrations:

I, Claudia Santana, declare as follows: I am properly authorized to execute this application and declaration on behalf of said Applicant; I believe Applicant to be the owner of the mark sought to be registered, or, if the application is being filed under Section 1051(b) of Title 15 of the United States Code, I believe that Applicant is entitled to use the mark in commerce and that the Applicant has to the best of my knowledge and belief, no other person, firm, corporation or association has the right to use the mark in commerce either in the identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of any other person, to cause confusion or to cause mistake, or to deceive; all statements made herein of my own knowledge are true; all statements made on information and belief are believed to

be true; these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application or document or any resulting registration.

Exhibits 1, 2 and 3. Based on what I have stated above, she and I both have always believed that Registrant is the rightful owner of the three service marks at issue, and we still firmly believe that her declaration was and is true and correct. We even informed Petitioner that we intended to apply for the registrations before we did so, and no one ever opposed the registrations or objected in any way.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: 02/28/05

By: 
Abelardo Santana Lee, President
SANTANA'S GRILL, INC.

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TAB C

DECLARATION OF CLAUDIA VALLARTA SANTANA

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Attorneys for Registrant
SANTANA'S GRILL, INC.

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

ARTURO SANTANA GALLEGO,

Petitioner,

v.

SANTANA'S GRILL, INC.

Registrant.

Cancellation Nos. 92043152
(Consolidated) 92043160
92043175

DECLARATION OF CLAUDIA VALLARTA SANTANA IN SUPPORT OF
REGISTRANT'S OPPOSITION TO PETITIONER'S MOTION FOR SUMMARY
JUDGMENT

I, Claudia Vallarta Santana, hereby declare and state as follows:

1. I am the Vice President and Secretary of Registrant Santana's Grill, Inc., and I have always handled accounting and payroll matters for the restaurants we operate, including both before and after Registrant's incorporation in April of 1998. I therefore maintain and am familiar with employee and payroll records for our company, which are kept and filed by me in the usual course of the business. When I refer to "Registrant" in this declaration, I mean Santana's Grill, Inc. or its predecessor which was a business owned by me and my husband Abelardo Santana Lee in an equal partnership. I am also the daughter-in-law of Petitioner Arturo Santana Gallego, and I am very familiar with his activities over the years with respect to the restaurant business, especially after my husband and I purchased Petitioner's first restaurant at 1480 Rosecrans Street in 1992.

2. Registrant Santana's Grill, Inc., is a corporation formed and co-owned by me and my husband Abelardo Santana Lee. Registrant now owns and operates or licenses six Mexican food restaurants in San Diego County, California, under the names "Santana's Mexican Grill" or "Santana's Mexican Food," and plans to continue expanding its business. Registrant is the owner of the three registered service marks that are the subject of this consolidated Cancellation Proceeding: U.S. Registration No. 2,631,458 for SANTANA'S MEXICAN FOOD...ES MUY BUENO, U.S. Registration No. 2,682,978 for SANTANA'S MEXICAN FOOD...ES MUY BUENO HOME OF FAMOUS CALIFORNIA BURRITO and Design, and U.S. Registration No. 2,634,976 for SANTANA'S MEXICAN GRILL. Exhibits. 1, 2 and 3 attached hereto (hereinafter "the '458, '978 and '976 Registrations," respectively).

3. For over thirteen years now Registrant has been very successful in developing its Mexican food restaurant business and the goodwill associated with the subject marks. Those efforts include careful quality control of the restaurants, uniformity in terms of the manner in which the restaurants are run (e.g., having employees wear uniform clothing bearing the marks and logos) and the menu items offered and ingredients used, and advertising for all the restaurants. Through this approach, Registrant has developed substantial goodwill in its

registered service marks for Mexican food restaurants that offer uniformly high quality food and services. Being in San Diego near several large military bases and relatively close to the border, Registrant's restaurants cater to many out-of-state tourists and military personnel, as well as to visitors from Mexico.

4. Petitioner Arturo Santana Gallego is my father-in-law and started what would become the first restaurant to use the name "Santana's Mexican Food," located at 1480 Rosecrans Street in San Diego. When Petitioner originally opened at this location he used other names like "Alberto's" and "Corona's." By 1988 he started using the name "Santana's Mexican Food" first at 1480 Rosecrans Street. Exhibit 4 is a true and correct copy of a Fictitious Business Name Statement filed by Petitioner in San Diego County in 1988 for SANTANA'S MEXICAN FOOD.

5. Registrant first started in the Mexican food business by acquiring the restaurant located at 1480 Rosecrans Street in San Diego from Petitioner in a transaction that was completed in January 1992. In exchange for the restaurant, my husband gave Petitioner an interest in an apartment in Tecate, Mexico worth about \$20,000, and forgave a debt Petitioner owed him also of about \$20,000. In order to accomplish the acquisition, my husband and I first joined Petitioner as partners in the restaurant business located at 1480 Rosecrans Street on December 31, 1991. Exhibit 5 are true and correct copies of a Report of Change of Ownership of restaurant at 1480 Rosecrans Street in San Diego filed December 31, 1991 (adding Abelardo Santana Lee and Claudia Vallarta Santana as partners), and a Letter Agreement dated October 11, 1991 to take over the lease.. Then, on January 27, 1992, Petitioner was "deleted" from the partnership. Exhibit 6 is a true and correct copy of a Report of Change of Ownership of restaurant at 1480 Rosecrans Street in San Diego filed January 27, 1992 (deleting Petitioner Arturo Santana Gallego). Petitioner did not retain any rights or control over the restaurant at 1480 Rosecrans Street, which after the transaction was under the complete and sole control of me and my husband.

6. As part of the acquisition, Petitioner abandoned his Fictitious Business Name Statement in San Diego County for "Santana's Mexican Food" so that Registrant could file it with the San Diego County Recorder's Office and thereby take possession of the service mark as its own. Exhibit 7 is a true and correct copy of a Statement of Abandonment of Use of Fictitious Business Name filed by Petitioner in San Diego County on January 9, 1992 (abandoning SANTANA'S MEXICAN FOOD). Exhibit 8 is a true and correct copy of a Fictitious Business Name Statement filed by Abelardo Santana Lee and Claudia Vallarta Santana in San Diego County on January 9, 1992 (adopting SANTANA'S MEXICAN FOOD). We did not use any attorneys for this transaction. Although Petitioner and I did not specifically discuss "trademarks" or "goodwill," I understood this transaction to be a transfer of the service mark along with the business and associated goodwill, and based on that my husband and I have built our business to now six restaurants in San Diego County. Petitioner never said anything to me about him retaining any rights in the service mark with respect to the business and goodwill associated with the restaurant located at 1480 Rosecrans Street. We are not and have never been a "licensee" of Petitioner, and he has no control over any aspect of our business.

7. After we purchased the restaurant at 1480 Rosecrans Street, Petitioner continued to own another restaurant at a remote location in Yucca Valley, San Bernardino County, California, that was also named "Santana's Mexican Food." However, the "Santana's Mexican Food" name was first used at the 1480 Rosecrans Street restaurant, and only later at the Yucca Valley location. Petitioner did not operate the Yucca Valley restaurant or even spend much time there, however. To the best of my knowledge and recollection, from 1989 to 1996 the Yucca Valley restaurant was run by Servando and Blanca Padilla, who are cousins of Petitioner. From 1996 until it was sold, the Yucca Valley restaurant was run by Sergio Valdez and his wife Ona Preciado Ruvalcaba. The Yucca Valley restaurant is in a remote location in the desert in San Bernardino County over 150 miles from San Diego. Exhibit 23 is a true and correct copy of a map showing driving directions and distance from San Diego to Yucca Valley, California. Petitioner eventually sold the Yucca Valley restaurant to Arturo Castaneda 1998 and basically

retired. To my knowledge he has been out of the restaurant business ever since, and has not been exercising any type of quality control or supervision over any restaurants. He has never controlled or supervised the operations of Registrant's restaurants. That was always done by my husband. We have continuously used the SANTANA'S MEXICAN FOOD service mark that is the subject of the '458 Registration in commerce at 1480 Rosecrans Street, at Registrant's other restaurants, and in general advertising for all our restaurants to the present day. When I signed the declaration for registration of this service mark I understood and believed that we owned it, and I still believe that we own this service mark.

8. In early 1993, with the assistance of Maite Agahnia of Neo Design in San Diego, I created the service mark that includes the words SANTANA'S MEXICAN FOOD...ES MUY BUENO HOME OF FAMOUS CALIFORNIA BURRITO and Design that is shown in the '978 Registration. Exhibit 9 is a true and correct copy of a letter from Maite Agahnia of NEO DESIGN dated September 10, 2003, explaining her role in assisting me with design of '978 Registration. We have used this service mark in commerce in various forms, sometimes without the words HOME OF FAMOUS CALIFORNIA BURRITO and sometimes only with the words SANTANA'S MEXICAN FOOD. However, it is always used with the words SANTANA'S MEXICAN FOOD sandwiched between the distinctive upper and lower "saw tooth" patterns that are part of the design. Exhibit 10 is a true and correct copy of various examples of Registrant's use of the '978 Registration service mark. Petitioner had absolutely no involvement in the creation or first use of the service mark of the '978 Registration.

9. I understand that Petitioner claims to have "invented" the "California Burrito," but I know Petitioner never used the phrase HOME OF FAMOUS CALIFORNIA BURRITO that is part of this service mark. By 1993 when I created this mark and first starting using it we were making our own version of the "California Burrito" and we were the first to use the phrase HOME OF FAMOUS CALIFORNIA BURRITO as part of a service mark. Exhibit 2. Registrant has continuously used this service mark in commerce at all its restaurants and in general advertising for all its restaurants to the present day.

10. When we first applied for registration of this mark, I mistakenly indicated that the date of first use in commerce coincided with the 1988 date of first use of the words SANTANA'S MEXICAN FOOD alone, and the '978 Registration issued with that incorrect date. Exhibit 2. This was merely an honest mistake caused by a misunderstanding between me and our attorney, who was new to our business and was not familiar with all the history of our business. As discussed above, the service mark as a whole was not created until 1993. I understand that this mistake was corrected by a Request for Corrected Registration Certificate that our attorney submitted to the Trademark Office in October of 2003. Exhibit 11 is a true and correct copy of Registrant's Request for Corrected Registration Certificate for the '978 Registration, submitted October 20, 2003.

11. The SANTANA'S MEXICAN GRILL service mark of the '976 Registration was created by my husband and I in 1997 as part of our overall plan to incorporate our business as "Santana's Grill, Inc." Exhibit 3. Our plan was to start using this mark at our other restaurant locations, including 1480 Rosecrans Street, 1525 Morena Boulevard, and two new locations to open at 411 Broadway in El Cajon, and 3742 Midway Drive, all in San Diego County. This mark was first used at the restaurant located at 411 Broadway in November of 1997 because that was the first of the two new locations to open. The restaurant at 411 Broadway was opened and set up by me and my husband with the intention that it would be owned and operated by my brother-in-law, Arturo Santana Lee, as another in our growing chain of Registrant's Mexican food restaurants. It was always our understanding and intention that my brother-in-law would operate the restaurant in the same manner as our other restaurants, with the same menu items, ingredients and quality.

12. At this time in the second half of 1997, my brother-in-law Arturo Santana Lee was still our employee and we trained him in the business. Exhibit 12 is a true and correct copy of Arturo Santana Lee's 1997 W-2 Wage and Tax Statement and Registrant's Quarterly Base Wage Report for all employees in 1997 showing Arturo Santana Lee as an employee of

Registrant in the third and fourth quarters of 1997.¹ To get the restaurant at 411 Broadway started, my husband and I personally guaranteed the lease for my brother-in-law. Exhibit 13 is a true and correct copy of a Guaranty of Lease for the 411 Broadway restaurant executed by Abelardo Santana Lee and Claudia Vallarta Santana on November 21, 1997. We also arranged for insurance at the 411 Broadway restaurant from Farmers Insurance Group, the company we had already been using at our other restaurants. Exhibit 14 is a true and correct copy of insurance documents showing that Registrant arranged for insurance at the 411 Broadway restaurant from Farmers Insurance Group. I also arranged for other services for the 411 Broadway restaurant, including bookkeeping, banking and payroll, insurance, gas and electric, telephone, water, sewer, and waste disposal. I put these services in Arturo Santana Lee's name since he would be the owner of the restaurant and responsible for paying the bills.

13. I also prepared the form for the Fictitious Business Name Statement in San Diego County for "Santana's Mexican Grill" for Arturo Santana Lee's signature using our business address at that time, 2067 Cecelia Terrace in San Diego. Exhibit 15 is a true and correct copy of a Fictitious Business Name Statement filed on behalf of Arturo Santana Lee in San Diego County on December 17, 1997, for SANTANA'S MEXICAN GRILL. The Fictitious Business Name Statement was put in my brother-in-law's name at that location because he was going to be the owner of that restaurant, not because we intended him to own the service mark. My brother-in-law, Arturo Santana Lee, could not have set up the new restaurant on his own. In late 1997 he lived in Mexico and still to this day speaks little or no English.

14. My husband and I arranged the entire set up and employee training necessary to open the restaurant at 411 Broadway, and instructed Arturo Santana Lee to use the "Santana's Mexican Grill" name with the understanding that he would operate the restaurant in a manner substantially uniform to our other restaurants. My husband and I worked very hard to open the

¹ Exhibit 12 is attached to a Confidential Declaration of Claudia Vallarta Santana and has been filed under seal because it shows employment information and social security numbers for our employees in 1997, one of which was my brother-in-law Arturo Santana Lee.

restaurant at 411 Broadway and properly train the new employees, in part to help my brother-in-law get started in a successful business in the United States, and mainly because all of our restaurants could benefit by buying the same supplies and ingredients in greater quantities and at better discounts. My brother-in-law, Arturo Santana Lee, understood this and agreed to this arrangement. He never indicated that he wanted to do anything different, which of course would have been unacceptable to me and my husband. We would not have done all this work for my brother-in-law if he was not planning to operate his restaurant in the same manner as our other restaurants.

15. In April of 1998 Registrant incorporated as "Santana's Grill, Inc.," and by July 1998 we opened our fourth restaurant at 3742 Midway Drive using the SANTANA'S MEXICAN GRILL mark. Exhibit 16 is a true and correct copy of incorporation documents for Registrant Santana's Grill, Inc. dated April 3, 1998, and showing its address at 2067 Cecilia Terrace in San Diego. Exhibit 17 is a true and correct copy of Fictitious Business Name Statements filed in San Diego County in March and April of 1998 for SANTANA'S MEXICAN GRILL at Registrant's 3742 Midway Drive restaurant. This was all part of our original plan to use this mark at all of our restaurant locations.

16. With the opening of this fourth location at 3742 Midway Drive, we prepared a uniform menu for all four restaurants, including the one at 411 Broadway. Exhibit 18 is a true and correct copy of a menu created by Registrant in 1998 for our four restaurants using the SANTANA'S MEXICAN GRILL service mark, including our licensee at 411 Broadway and our three other restaurants at that time. This further shows the intentions and understandings of all the parties involved that the 411 Broadway restaurant would be allowed to use the "Santana's Mexican Grill" name only on condition that it operate in the same manner and with the same menu as the other three restaurants in our growing chain of Mexican food restaurants. My husband and I controlled the manner of use of this service mark at the 411 Broadway location by training employees, establishing the menu and recipes used, and lining up the suppliers of the ingredients, among other things. My husband and I intended to continue this oversight and

quality control over the 411 Broadway restaurant because we also had three other restaurants at this time and substantial and valuable customer goodwill that we did not want to jeopardize.

17. What unfortunately started this dispute in part was the fact that my brother-in-law, Arturo Santana Lee, apparently no longer wants to operate his restaurants in the same high quality manner as Registrant's now six other "Santana's Mexican Grill" restaurants in San Diego. However, he wants to continue using our trademarks, which is causing a great deal of consumer confusion because our chain of restaurants has become very popular in San Diego. My brother-in-law, Arturo Santana Lee, now wants to strike out on his own, after having been completely set up in the restaurant business by me and my husband, but rather than change the name of his restaurants to "Arturo's," for example, he wants to continue enjoying the benefits of our goodwill developed over thirteen years of hard work and dedication to this business. In fact, he is still to this day using the menu created back in 1998 listing the addresses of the three other restaurants we owned at that time, and still own today. Exhibit 18. Terminating the license to use our service marks at 411 Broadway became necessary because Arturo Santana Lee ultimately rejected our quality control efforts and stopped operating the restaurant at 411 Broadway in a manner consistent with our other restaurants.

18. When we applied for registration of the SANTANA'S MEXICAN GRILL service mark I gave our attorney the July 1998 date as its first use "on or before" date. This was due to my honest misunderstanding about the concept that Registrant could claim its first use through a licensee such as 411 Broadway, and not just by its own direct use that started at 3742 Midway Drive in July of 1998. Our attorney was not aware of these facts about the 411 Broadway restaurant when the application was prepared. As discussed above, we believe we own this service mark because we created the mark and licensed its use to Arturo Santana Lee (who was then our employee), completely set up the restaurant at 411 Broadway to be operated as one of our chain, and have continued direct use of the mark from 1998 to the present.

19. I understand that Petitioner recently filed a summary judgment motion and he now claims to be an "owner" and "licensor" of the SANTANA'S MEXICAN GRILL mark. In

fact, Petitioner has had no involvement in the creation or use of this service mark, as he sold his only other restaurant in Yucca Valley to a third party, Arturo Castaneda, in 1998. Petitioner has been out of the Mexican food restaurant business ever since and basically retired. I am not aware of him doing any type of quality control over any restaurants.

20. I am aware that the person who bought the Yucca Valley restaurant from Petitioner in 1998, Arturo Castaneda, has been using the SANTANA'S MEXICAN GRILL mark for his restaurants even though he has absolutely no right to do so. Exhibit 19 is a true and correct copy of a Yellow Pages advertisement and a photograph of the restaurant at 73680 Sun Valley in 29 Palms showing Arturo Castaneda's unauthorized use of SANTANA'S MEXICAN GRILL. This is a cause of serious concern for Registrant because Arturo Castaneda has recently failed to obtain an "A" cleanliness rating from the San Bernardino County Department of Public Health at the Yucca Valley restaurant and so threatens to tarnish Registrant's trademarks and undermine the goodwill in the marks painstakingly developed over our thirteen years of effort. Exhibit 20 is a true and correct copy of a Report from the San Bernardino County Department of Public Health showing Arturo Castaneda's restaurant at 56547 29 Palms Highway in Yucca Valley obtaining only a "B" cleanliness rating after inspections on November 16, 2004 and January 3, 2005. This was yet another reason why Registrant was compelled to bring a lawsuit in District Court to protect its valuable goodwill and trademarks, because the third parties that we originally were forced to sue and who have now aligned themselves with Petitioner as his supposed "licensees" operate their restaurants in a low quality, haphazard and sometimes unsanitary manner.

21. I believe that Registrant is the only party that is using the three subject trademarks at its six restaurant locations in a consistent manner so as to build more brand recognition and goodwill. Petitioner is not using the subject marks at all, having sold his last restaurant in 1998. The third parties Registrant was forced to sue in District Court, Arturo Castaneda, Arturo Santana Lee and Pedro Santana Lee, now all use these marks in a haphazard and non-uniform manner because they all want to be independent. As discussed above, Arturo Castaneda's failure

to obtain an "A" cleanliness rating for at least one of his restaurants threatens to tarnish and damage the marks and Registrant's valuable goodwill. Only Registrant is using the subject marks as true "trademarks" or symbols of origin for its chain of six restaurants in a manner that will maintain and enhance the substantial customer recognition, loyalty and goodwill to which the marks have become associated. Exhibit 21 is a true and correct copy of photographs of Registrant's six restaurants and our website advertising.

22. Registrant's restaurants are located in San Diego, one of the most popular tourist destinations in the United States. Registrant's restaurant at 1480 Rosecrans Street, for example, is located within two miles of the San Diego International Airport, the United States Naval Training Center, and Fort Rosecrans Military Reservation, as well as being on the way to Cabrillo National Monument, a popular tourist location at the tip of Point Loma. Exhibit 22 is a true and correct copy of maps showing the locations of Registrant's restaurants at 1480 Rosecrans Street and at 3742 Midway Drive in San Diego in relation to San Diego International Airport, several U.S. military bases, and Cabrillo National Monument. Registrant's restaurant at 3742 Midway Drive is located in the same area. Exhibit 22. As a result, many of Registrants customers have included out-of-state tourists and military personnel stationed in San Diego.

23. As Registrant's Secretary I signed the following declaration when we applied for the three service mark registrations:

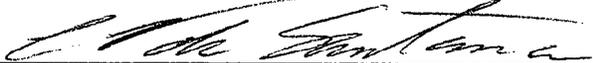
I, Claudia Santana, declare as follows: I am properly authorized to execute this application and declaration on behalf of said Applicant; I believe Applicant to be the owner of the mark sought to be registered, or, if the application is being filed under Section 1051(b) of Title 15 of the United States Code, I believe that Applicant is entitled to use the mark in commerce and that the Applicant has to the best of my knowledge and belief, no other person, firm, corporation or association has the right to use the mark in commerce either in the identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of any other person, to cause confusion or to cause mistake, or to deceive; all statements made herein of my own knowledge are true; all statements made on information and belief are believed to be true; these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful,

false statements may jeopardize the validity of the application or document or any resulting registration.

Exhibits 1, 2 and 3. Based on what I have stated above, I have always believed that Registrant is the rightful owner of the three service marks at issue, and I still firmly believe that my declaration was and is true and correct. I never had any intention to deceive the Trademark Office or to obtain the registrations through fraud. My husband and I even informed Petitioner that we intended to apply for the registrations before we did so, and no one ever opposed the registrations or objected in any way.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: 2-28-2005

By: 

Claudia Vallarta Santana, V.P. and Secretary
SANTANA'S GRILL, INC.

S:\DOCS\FSB\FSB-3110.DOC

TAB D

DECLARATION OF FREDERICK S. BERRETTA

Frederick S. Berretta
AnneMarie Kaiser
KNOBBE, MARTENS, OLSON & BEAR, LLP
550 West C Street, Suite 1200
San Diego, California 92101
(619) 235-8550
(619) 235-0176 (FAX)

Attorneys for Registrant
SANTANA'S GRILL, INC.

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

ARTURO SANTANA GALLEGO

Petitioner,

v.

SANTANA'S GRILL, INC.

Registrant.

Cancellation Nos. 92043152
(Consolidated) 92043160
92043175

**DECLARATION OF FREDERICK S. BERRETTA IN SUPPORT OF OPPOSITION
TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

I, Frederick S. Berretta, hereby declare and state as follows:

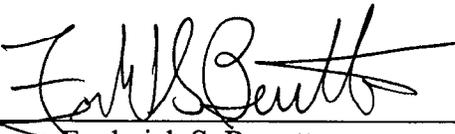
1. I am a partner in the law firm of Knobbe, Martens, Olson & Bear, LLP, counsel of record for Registrant Santana's Grill, Inc. in this Consolidated Cancellation, and the partner in charge of this matter for the firm. I have personal firsthand knowledge of the matters set forth below, and if called as a witness I could testify competently thereto.

2. Attached hereto as Exhibit 24 is a true and correct copy of a letter from M. Cris Armenta, counsel for Petitioner, to me dated January 25, 2005, stating that Petitioner decided to not appear voluntary for a deposition in the United States in part because he is over seventy years old and is not well.

3. Attached hereto as Exhibit 25 is a true and correct copy of a letter from M. Cris Armenta, counsel for Petitioner, to me dated February 11, 2005, stating in part that Petitioner is a man of substantial years with very limited ability to communicate in English.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: March 29, 2005

By: 
Frederick S. Berretta

TAB E

EXHIBITS 1 THROUGH 25

EXHIBIT 1

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,631,458
Registered Oct. 8, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

SANTANA'S MEXICAN FOOD...ES MUY BUENO

SANTANA'S GRILL, INC. (CALIFORNIA COR-
PORATION)
2067 CECELIA TERRACE
SAN DIEGO, CA 92110

FOR: RESTAURANT SERVICES, IN CLASS 42
(U.S. CLS. 100 AND 101).

FIRST USE 0-0-1988; IN COMMERCE 0-0-1988.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "MEXICAN FOOD", APART FROM
THE MARK AS SHOWN.

THE ENGLISH TRANSLATION OF "ES MUY
BUENO" IS "IT'S VERY GOOD".

SER. NO. 76-345,538, FILED 12-5-2001.

SHAVELL MCPHERSON, EXAMINING ATTORNEY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
APPLICATION FOR SERVICE MARK REGISTRATION UNDER SECTION 1(a)
PRINCIPAL REGISTER

Mark : SANTANA'S MEXICAN
FOOD...ES MUY BUENO
Int. Class : 42

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

Dear Sir:

The Applicant is:

SANTANA'S GRILL, INC.,
a California corporation,
2067 Cecelia Terrace, San Diego, California 92110.

Applicant has adopted and is using the service mark shown in the accompanying drawing on or in connection with the following services: **RESTAURANT SERVICES in International Class 42**; and requests that the mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. § 1051, et seq., as amended).

The service mark was first used in connection with the services on or before 1988; was first used in commerce on or before 1988; and is now in use in such commerce.

One (1) specimen for each class showing the mark as used in commerce is submitted with this application.

POWER OF ATTORNEY

Applicant hereby appoints Louis J. Knobbe, Don W. Martens, Gordon H. Olson, James B. Bear, Darrell L. Olson, William B. Bunker, William H. Nieman, Arthur S. Rose, James F. Lesniak, Ned A. Israelsen, Drew S. Hamilton, Jerry T. Sewell, John B. Sganga, Jr., Edward A. Schlatter, Gerard von Hoffmann, Joseph R. Re, Catherine J. Holland, John M. Carson, Karen Vogel Weil, Andrew H. Simpson, Jeffrey L. Van Hoosear, Daniel E. Altman, Marguerite L. Gunn, Vito A. Canuso, Lynda J. Zadra-Symes, William H. Shreve, Stephen C. Jensen, Steven J. Nataupsky, Paul A. Stewart, Joseph F. Jennings, Craig S. Summers, AnneMarie Kaiser, Brenton R. Babcock, Thomas F. Smegal, Jr., Michael H. Trenholm, Diane M. Reed, Ronald J. Schoenbaum, John R. King, Frederick S. Berretta, Nancy Ways Vensko, John P. Giezentanner, Adeel S. Akhtar, Ginger R. Dreger, Thomas R. Arno, David N. Weiss, Dan Hart, Douglas G. Muehlhauser, Lori Lee Yamato, Michael K. Friedland, Dale C. Hunt, Richard E. Campbell, Paul D. Tripodi, Stacey R. Halpern, Lee W. Henderson, Mark M. Abumeri, Jon W. Gurka, Deborah S. Shepherd, Eric M. Nelson, Mark R. Benedict, Paul N. Conover, Robert J. Roby, Sabling H. Lee, Karoline A. Delaney, John W. Holcomb, James J. Mullen, III, Joseph S. Cianfrani, Joseph M. Reisman, William R. Zimmerman, Glen L. Nuttall, Tirzah Abé Lowe, Alexander Franco, Sanjivpal S. Gill, Susan Moss Natland, Eric S. Furman, James W. Hill, Rose M. Thiessen, Michael L. Fuller, Michael A. Guiliana, Mark J. Kertz, Rabinder N. Narula, Bruce S. Itchkawitz, Peter M. Midgley, Thomas S. McClenahan, Michael S. Okamoto, John M. Grover, Mallery K. de Merlier, Irfan A. Lateef, Amy C. Christensen, Sharon S. Ng, Mark J. Gallagher, David G. Jankowski, Brian C. Horne, Payson J. LeMèilleur, Diana W. Prince, Paul C. Steinhardt, William C. Boling, Sheila N. Swaroop, Benjamin A. Katzenellenbogen, Chanette Lee Armstrong, Linda H. Liu, Vincent M. Pollmeier, Jeffrey S. Ellsworth, Andrew N. Merickel, Douglas T. Hudson, David L. Hauser, Kaare D. Larson, James F. Herkenhoff, Scott L. Murray, C. Philip Poirier, Roger S. Shang, Andrew M. Douglas, Marc T. Morley, Salima A. Merani, Tina M. Chappell, Sam K. Tahmassebi, Christy L. Green, Jalal Sadr, Jonathan A. Hyman, Curtiss C. Dosier, Richard A. DeCristofaro, Joseph J. Mallon, Ph.D., Joanne L. Dufek, Thomas P. Krzeminski, Jeffrey A. Birchak, and Matthew S. Bellinger of KNOBBE, MARTENS, OLSON & BEAR, LLP, 620 Newport Center Drive, Sixteenth Floor, Newport Beach, California 92660, Telephone (949) 760-0404, as its attorneys with full power of

substitution and revocation to prosecute this application and to transact all business in the U.S. Patent and Trademark Office connected herewith.

DECLARATION

I, Claudia Santana, declare as follows: I am properly authorized to execute this application and declaration on behalf of said Applicant; I believe Applicant to be the owner of the mark sought to be registered, or, if the application is being filed under Section 1051(b) of Title 15 of the United States Code, I believe that Applicant is entitled to use the mark in commerce and that the Applicant has to the best of my knowledge and belief, no other person, firm, corporation or association has the right to use the mark in commerce either in the identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of any other person, to cause confusion or to cause mistake, or to deceive; all statements made herein of my own knowledge are true; all statements made on information and belief are believed to be true; these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application or document or any resulting registration.

SANTANA'S GRILL, INC.

Dated: 11-27-01

By: 
Claudia Santana
Vice President

S:\DOCS\AOK\AOK-7434.DOC
102601

EXHIBIT 2

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,682,978

Registered Feb. 4, 2003

SERVICE MARK
PRINCIPAL REGISTER



... Es Muy Bueno

HOME OF FAMOUS
CALIFORNIA
BURRITO

SANTANA'S GRILL, INC. (CALIFORNIA COR-
PORATION)
2067 CECELIA TERRACE
SAN DIEGO, CA 92110

FORNIA BURRITO", APART FROM THE MARK AS
SHOWN.

FOR: RESTAURANT SERVICES, IN CLASS 42
(U.S. CLS. 100 AND 101).

THE ENGLISH TRANSLATION OF "ES MUY
BUENO" IS "IT'S VERY GOOD".

FIRST USE 0-0-1988; IN COMMERCE 0-0-1988.

SER. NO. 76-345,542, FILED 12-5-2001.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "MEXICAN FOOD" AND "CALI-

JEFFERY COWARD, EXAMINING ATTORNEY

SANT.002T

SERVICE MARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
APPLICATION FOR SERVICE MARK REGISTRATION UNDER SECTION 1(a)
PRINCIPAL REGISTER

Mark : SANTANA'S MEXICAN
FOOD...ES MUY BUENO
HOME OF FAMOUS
CALIFORNIA BURRITO
and Design

Int. Class : 42

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

Dear Sir:

The Applicant is:

SANTANA'S GRILL, INC.,
a California corporation,
2067 Cecelia Terrace, San Diego, California 92110.

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The service mark was first used in connection with the services on or before 1988; was first used in commerce on or before 1988; and is now in use in such commerce.

One (1) specimen for each class showing the mark as used in commerce is submitted with this application.

POWER OF ATTORNEY

Applicant hereby appoints Louis J. Knobbe, Don W. Martens, Gordon H. Olson, James B. Bear, Darrell L. Olson, William B. Bunker, William H. Nieman, Arthur S. Rose, James F. Lesniak, Ned A. Israelsen, Drew S. Hamilton, Jerry T. Sewell, John B. Sganga, Jr., Edward A. Schlatter, Gerard von Hoffmann, Joseph R. Re, Catherine J. Holland, John M. Carson, Karen Vogel Weil, Andrew H. Simpson, Jeffrey L. Van Hoosear, Daniel E. Altman, Marguerite L. Gunn, Vito A. Canuso, Lynda J. Zadra-Symes, William H. Shreve, Stephen C. Jensen, Steven J. Nataupsky, Paul A. Stewart, Joseph F. Jennings, Craig S. Summers, AnneMarie Kaiser, Brenton R. Babcock, Thomas F. Smegal, Jr., Michael H. Trenholm, Diane M. Reed, Ronald J. Schoenbaum, John R. King, Frederick S. Berretta, Nancy Ways Vensko, John P. Giezentanner, Adeel S. Akhtar, Ginger R. Dreger, Thomas R. Arno, David N. Weiss, Dan Hart, Douglas G. Muehlhauser, Lori Lee Yamato, Michael K. Friedland, Dale C. Hunt, Richard E. Campbell, Paul D. Tripodi, Stacey R. Halpern, Lee W. Henderson, Mark M. Abumeri, Jon W. Gurka, Deborah S. Shepherd, Eric M. Nelson, Mark R. Benedict, Paul N. Conover, Robert J. Roby, Sabin H. Lee, Karoline A. Delaney, John W. Holcomb, James J. Mullen, III, Joseph S. Cianfrani, Joseph M. Reisman, William R. Zimmerman, Glen L. Nuttall, Tirzah Abé Lowe, Alexander Franco, Sanjivpal S. Gill, Susan Moss Natland, Eric S. Furman, James W. Hill, Rose M. Thiessen, Michael L. Fuller, Michael A. Guiliana, Mark J. Kertz, Rabinder N. Narula, Bruce S. Itchkawitz, Peter M. Midgley, Thomas S. McClenahan, Michael S. Okamoto, John M. Grover, Mallary K. de Merlier, Irfan A. Lateef, Amy C. Christensen, Sharon S. Ng, Mark J. Gallagher, David G. Jankowski, Brian C. Home, Payson J. LeMeilleur, Diana W. Prince, Paul C. Steinhardt, William C. Boling, Sheila N. Swaroop, Benjamin A. Katzenellenbogen, Chanette Lee Armstrong, Linda H. Liu, Vincent M. Pollmeier, Jeffrey S. Ellsworth, Andrew N. Merickel, Douglas T. Hudson, David L. Hauser, Kaare D. Larson, James F. Herkenhoff, Scott L. Murray, C. Philip Poirier, Roger S. Shang, Andrew M. Douglas, Marc T. Morley, Salima A. Merani, Tina M. Chappell, Sam K. Tahmassebi, Christy L. Green, Jalal Sadr, Jonathan A. Hyman, Curtiss C. Dosier, Richard A. DeCristofaro, Joseph J. Mallon, Ph.D., Joanne L. Dufek, Thomas P. Krzeminski, Jeffrey A. Birchak, and Matthew S. Bellinger of KNOBBE, MARTENS, OLSON & BEAR, LLP, 620 Newport Center Drive, Sixteenth Floor, Newport Beach, California 92660, Telephone (949) 760-0404, as its attorneys with full power of

substitution and revocation to prosecute this application and to transact all business in the U.S. Patent and Trademark Office connected herewith.

DECLARATION

I, Claudia Santana, declare as follows: I am properly authorized to execute this application and declaration on behalf of said Applicant; I believe Applicant to be the owner of the mark sought to be registered, or, if the application is being filed under Section 1051(b) of Title 15 of the United States Code, I believe that Applicant is entitled to use the mark in commerce and that the Applicant has to the best of my knowledge and belief, no other person, firm, corporation or association has the right to use the mark in commerce either in the identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of any other person, to cause confusion or to cause mistake, or to deceive; all statements made herein of my own knowledge are true; all statements made on information and belief are believed to be true; these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application or document or any resulting registration.

SANTANA'S GRILL, INC.

Dated: 11-27-01

By: *C. Santana*

Claudia Santana
Vice President

EXHIBIT 3

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,634,976

Registered Oct. 15, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

SANTANA'S MEXICAN GRILL

SANTANA'S GRILL, INC. (CALIFORNIA COR-
PORATION)
2067 CECELIA TERRACE
SAN DIEGO, CA 92110

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "MEXICAN GRILL", APART FROM
THE MARK AS SHOWN.

FOR: RESTAURANT SERVICES, IN CLASS 42
(U.S. CLS. 100 AND 101).

SER. NO. 76-345,537, FILED 12-5-2001.

FIRST USE 7-0-1998; IN COMMERCE 7-0-1998.

SHAVELL MCPHERSON, EXAMINING ATTORNEY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
APPLICATION FOR SERVICE MARK REGISTRATION UNDER SECTION 1(a)
PRINCIPAL REGISTER

Mark : SANTANA'S MEXICAN
GRILL

Int. Class : 42

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

Dear Sir:

The Applicant is:

SANTANA'S GRILL, INC.,
a California corporation,
2067 Cecelia Terrace, San Diego, California 92110.

Applicant has adopted and is using the service mark shown in the accompanying drawing on or in connection with the following services: **RESTAURANT SERVICES in International Class 42**; and requests that the mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. § 1051, et seq., as amended).

The service mark was first used in connection with the services on or before July 1998; was first used in commerce on or before July 1998; and is now in use in such commerce.

One (1) specimen for each class showing the mark as used in commerce is submitted with this application.

POWER OF ATTORNEY

Applicant hereby appoints Louis J. Knobbe, Don W. Martens, Gordon H. Olson, James B. Bear, Darrell L. Olson, William B. Bunker, William H. Nieman, Arthur S. Rose, James F. Lesniak, Ned A. Israelsen, Drew S. Hamilton, Jerry T. Sewell, John B. Sganga, Jr., Edward A.

Schlatter, Gerard von Hoffmann, Joseph R. Re, Catherine J. Holland, John M. Carson, Karen Vogel Weil, Andrew H. Simpson, Jeffrey L. Van Hoosear, Daniel E. Altman, Marguerite L. Gunn, Vito A. Canuso, Lynda J. Zadra-Symes, William H. Shreve, Stephen C. Jensen, Steven J. Nataupsky, Paul A. Stewart, Joseph F. Jennings, Craig S. Summers, AnneMarie Kaiser, Brenton R. Babcock, Thomas F. Smegal, Jr., Michael H. Trenholm, Diane M. Reed, Ronald J. Schoenbaum, John R. King, Frederick S. Berretta, Nancy Ways Vensko, John P. Giezentanner, Adeel S. Akhtar, Ginger R. Dreger, Thomas R. Arno, David N. Weiss, Dan Hart, Douglas G. Muehlhauser, Lori Lee Yamato, Michael K. Friedland, Dale C. Hunt, Richard E. Campbell, Paul D. Tripodi, Stacey R. Halpern, Lee W. Henderson, Mark M. Abumeri, Jon W. Gurka, Deborah S. Shepherd, Eric M. Nelson, Mark R. Benedict, Paul N. Conover, Robert J. Roby, Sabing H. Lee, Karoline A. Delaney, John W. Holcomb, James J. Mullen, III, Joseph S. Cianfrani, Joseph M. Reisman, William R. Zimmerman, Glen L. Nuttall, Tirzah Abé Lowe, Alexander Franco, Sanjivpal S. Gill, Susan Moss Natland, Eric S. Furman, James W. Hill, Rose M. Thiessen, Michael L. Fuller, Michael A. Guiliana, Mark J. Kertz, Rabinder N. Narula, Bruce S. Itchkawitz, Peter M. Midgley, Thomas S. McClenahan, Michael S. Okamoto, John M. Grover, Mallery K. de Merlier, Irfan A. Lateef, Amy C. Christensen, Sharon S. Ng, Mark J. Gallagher, David G. Jankowski, Brian C. Horne, Payson J. LeMeilleur, Diana W. Prince, Paul C. Steinhardt, William C. Boling, Sheila N. Swaroop, Benjamin A. Katzenellenbogen, Chanette Lee Armstrong, Linda H. Liu, Vincent M. Pollmeier, Jeffrey S. Ellsworth, Andrew N. Merickel, Douglas T. Hudson, David L. Hauser, Kaare D. Larson, James F. Herkenhoff, Scott L. Murray, C. Philip Poirier, Roger S. Shang, Andrew M. Douglas, Marc T. Morley, Salima A. Merani, Tina M. Chappell, Sam K. Tahmassebi, Christy L. Green, Jalal Sadr, Jonathan A. Hyman, Curtiss C. Dosier, Richard A. DeCristofaro, Joseph J. Mallon, Ph.D., Joanne L. Dufek, Thomas P. Krzeminski, Jeffrey A. Birchak, and Matthew S. Bellinger of KNOBBE, MARTENS, OLSON & BEAR, LLP, 620 Newport Center Drive, Sixteenth Floor, Newport Beach, California 92660, Telephone (949) 760-0404, as its attorneys with full power of substitution and revocation to prosecute this application and to transact all business in the U.S. Patent and Trademark Office connected herewith.

DECLARATION

I, Claudia Santana, declare as follows: I am properly authorized to execute this application and declaration on behalf of said Applicant; I believe Applicant to be the owner of the mark sought to be registered, or, if the application is being filed under Section 1051(b) of Title 15 of the United States Code, I believe that Applicant is entitled to use the mark in commerce and that the Applicant has to the best of my knowledge and belief, no other person, firm, corporation or association has the right to use the mark in commerce either in the identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of any other person, to cause confusion or to cause mistake, or to deceive; all statements made herein of my own knowledge are true; all statements made on information and belief are believed to be true; these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application or document or any resulting registration.

SANTANA'S GRILL, INC.

Dated: 11-27-01

By: *Claudia Santana*
Claudia Santana
Vice President

EXHIBIT 4

PLEASE PRINT OR TYPE
FIRMLY. YOU ARE MAKING
MULTIPLE COPIES.

ROBERT D. ZUMWALT,
COUNTY CLERK
County Courthouse, 220 West Broadway
P. O. Box 128, San Diego, California 92112-4104
(619) 236-3253

This Space For Use of County Clerk

077
APR 15 1988

FILED 3 15 PM '88

ROBERT D. ZUMWALT
COUNTY CLERK
SAN DIEGO COUNTY
CALIFORNIA

SEE REVERSE SIDE
FOR INSTRUCTIONS

FILING FEE
\$10.00 - FOR FIRST BUSINESS NAME ON STATEMENT
\$ 2.00 - FOR EACH ADDITIONAL BUSINESS NAME
FILED ON SAME STATEMENT AND DOING
BUSINESS AT THE SAME LOCATION
\$ 2.00 - FOR EACH ADDITIONAL OWNER IN EXCESS
OF ONE OWNER

FICTITIOUS BUSINESS NAME STATEMENT

THE NAME(S) OF THE BUSINESS(ES)

* SANTANA'S MEXICAN FOOD
(Print Fictitious Business Name[s] on Line Above)

** LOCATED AT: 1480 ROSECRANS ST.
(Street Address of Business - If No Street Address Assigned - Give Exact Location of Business Plus P.O. Box or Rural Route)
IN: SAN DIEGO, CA. 92106
(City and Zip)

IS (ARE) HEREBY REGISTERED BY THE FOLLOWING OWNER(S):

*** #1 ARTURO SANTANA
(Full Name - Type/Print) APT. 202

3111 MACAULAY ST.
(Residence address if not incorporated)
(State of incorporation if incorporated)
SAN DIEGO, CA. 92106
(City and Zip)

#2
(Full Name - Type/Print)

Residence address if not incorporated
(State of incorporation if incorporated)

(City and Zip)

#3
(Full Name - Type/Print)

Residence address if not incorporated
(State of incorporation if incorporated)

(City and Zip)

#4
(Full Name - Type/Print)

Residence address if not incorporated
(State of incorporation if incorporated)

(City and Zip)

***** This business is conducted by: an Individual Individuals - Husband and Wife a General Partnership
 a Limited Partnership a Corporation a Business Trust Co-Partners a Joint Venture
 an Unincorporated Association - other than a Partnership Other (Specify)

***** THE REGISTRANT COMMENCED THE TRANSACTION OF BUSINESS ON: DEC. 87

SIGNATURE OF REGISTRANT: [Signature]

ARTURO SANTANA
(Print name of person signing and, if a Corporate Officer, also state title)

THIS STATEMENT WAS FILED WITH ROBERT D. ZUMWALT, COUNTY CLERK OF SAN DIEGO COUNTY
ON DATE INDICATED BY FILE STAMP ABOVE

NOTICE

THIS FICTITIOUS BUSINESS NAME STATEMENT EXPIRES ON DECEMBER 31ST, FIVE (5) YEARS FROM THE YEAR OF FILING.
IF YOU INTEND TO CONTINUE BUSINESS UNDER THIS NAME, A NEW FICTITIOUS BUSINESS NAME STATEMENT
MUST BE FILED PRIOR TO:

DEC. 31, 1993

ASSIGNED FILE NO. 8805655

EXHIBIT 5



City of San Diego
BUSINESS TAXES SECTION
 P.O. Box 121536
 San Diego, California 92112

Business Tax Certificate No.
86015722

Effective Date of Change: 12-31-91

REPORTING CHANGE IN:
 (Please check all applicable)

ZUC NO.

- LOCATION
- OWNERSHIP TYPE ON EXISTING BUSINESSES
- ACTIVITY CODE
- EMPLOYEE COUNT From _____ to _____

OWNER'S NAME: ARTURO SANTANA
 BUSINESS NAME: SANTANA'S MEXICAN FOOD

LOCATION
 PREVIOUS BUSINESS ADDRESS
 (required for reporting the change of location only)

CURRENT BUSINESS ADDRESS:
1480 ROSECRANS ST
 NUMBER STREET
SAN DIEGO CA 92106 (419) 226-8745
 CITY STATE ZIP CODE PHONE #

CURRENT MAILING ADDRESS:
SAME
 NUMBER STREET SUITE
 CITY STATE ZIP CODE PHONE #

- OWNERSHIP TYPE: (Check box if reporting change of ownership type only)
- Sole to Partnership
 - Partnership to Sole
 - Corporation to Sole
 - Sole to Corporation
 - Partnership to Corporation
 - Corporation to Partnership

Please list below the names and full residence addresses of partners or corporate officers of your business. If deleting, use letter "D" in box and if adding partner or corporate officer, use "A" in box.

- Name: ABELARDO SANTANA-LEE
 Residence Address: 5810 RILEY ST #1
SAN DIEGO, CA 92110 S.S. or Fed. Emp. I.D. No. 557-91-2691
- Name: CLAUDIA VALLARTA-SANTANA
 Residence Address: 5810 RILEY ST #1
SAN DIEGO, CA 92110 S.S. # 545-91-6687
- Name: _____
 Residence Address: _____ S.S. # _____

PRINCIPAL BUSINESS ACTIVITY CODE: New Principal Business Activity Code:
 (use the business listing category)

Describe in detail activities to be conducted on the premise, including any products or services provided:

Seller's Permit # _____ Current State Contractor's License # _____
 (Seller's Permit may be obtained from the State Board of Equalization, 237-7733.)
 (State Contractors License may be obtained from the State Contractors Bureau, 455-0237, and is required from all contractors.)

OWNER'S SIGNATURE: _____ DATE: 12-31-91

(PLEASE FILL OUT IN DUPLICATE AND RETAIN ONE COPY)

FOR OFFICE USE ONLY

EXHIBIT 5 PAGE 1 OF 2

Zoning fee required: YES _____ NO _____
 (circle one)
 Payment Date: _____ Total Paid: _____ Total Owed: 12.00

October 11, 1991

Dr. George Farres
3358 F. Street
San Diego, California 92102

Dear Dr. George Farres:

This is the letter of what we agreed to do in our conversation today regarding the contract for rent of the property located at 1480 Rosecrans Street corner with Hugo.

Term of lease: Five (5) years; with an option to extend for five (5) more.

Rent: Rent to be \$3,500.00 per month starting January 7th, 1992 and to remain the same for this year.
2nd year; Starting January 7th, 1993 rent to be \$4,000.00 per month and to remain the same for this year.
3rd, 4th & 5th year; There will be a 5% percent increase annually for each year.

Before the 5th year is over (1996) we will get together to discuss about the 5 year option.

Lease document: The lease is to be an INDUSTRIAL/ COMMERCIAL LEASE, NNN (Triple Net).

Premises: Premises are to be taken in it's PRESENT CONDITION (AS IS), including all equipment and building.

Very truly yours,

C. Vallarta-Santana
CLAUDIA VALLARTA-SANTANA

Dr. George Farres
DR. GEORGE FARRES

A *Abelardo Santana*
ABELARDO SANTANA

C. Vallarta-Santana
CEAUDIA VALLARTA-SANTANA

All terms & conditions of previous 12-10-91 Lease are in effect. EXHIBIT 5 PAGE 2 OF 2

C. Vallarta-Santana *G. Farres*

EXHIBIT 6



City of San Diego
BUSINESS TAXES SECTION
 P.O. Box 121536
 San Diego, California 92112

Business Tax Certificate No.
86015722

Effective Date of Change: _____

REPORTING CHANGE IN:
 (Please check all applicable)

ZUC NO. _____

- LOCATION
- OWNERSHIP TYPE ON EXISTING BUSINESSES
- ACTIVITY CODE
- EMPLOYEE COUNT: From _____ to _____

OWNER'S NAME: CLAUDIA VALLARTA-SANTANA
 BUSINESS NAME: SANTANA'S MEXICAN FOOD

LOCATION

PREVIOUS BUSINESS ADDRESS

(required for reporting the change of location only)

CURRENT BUSINESS ADDRESS:

1480 ROSECRANS ST.
 NUMBER STREET
SAN DIEGO CA 92106 (619) 226-8745
 CITY STATE ZIP CODE PHONE #

CURRENT MAILING ADDRESS:

NUMBER STREET SUITE
 CITY STATE ZIP CODE PHONE #

- OWNERSHIP TYPE: (Check box if reporting change of ownership type only)
- Sole to Partnership
 - Partnership to Sole
 - Corporation to Sole
 - Sole to Corporation
 - Partnership to Corporation
 - Corporation to Partnership

Please list below the names and full residence addresses of partners or corporate officers of your business. If deleting, use letter "D" in box and if adding partner or corporate officer, use "A" in box.

Name: ARTURO SANTANA
 Residence Address: _____ S.S. or Fed. Emp. I.D. No. 15-4083523

Name: _____ S.S. # _____

Name: _____ S.S. # _____

PRINCIPAL BUSINESS ACTIVITY CODE New Principal Business Activity Code:
 (use the business listing category)

Describe in detail activities to be conducted on the premise, including any products or services provided.

Seller's Permit # _____ Current State Contractor's License # _____
 (Seller's Permit may be obtained from the State Board of Equalization, 237-7733.)
 (State Contractors License may be obtained from the State Contractors Bureau, 455-0237, and is required from all contractors.)

[Signature] [Signature]
 OWNER'S SIGNATURE DATE 1-27-92

(PLEASE FILL OUT IN DUPLICATE AND RETAIN ONE COPY)

FOR OFFICE USE ONLY

Zoning fee required: YES _____ NO _____
 (circle one)

Payment Date _____ Total Paid _____ Total Owed 0

86015722

SG00053

EXHIBIT 7

PLEASE PRINT OR TYPE

ANNETTE J. EVANS
RECORDER/COUNTY CLERK

P.O. BOX 1750 SAN DIEGO, CA 92112-4147
(619) 531-5210

SEE REVERSE SIDE
FOR INSTRUCTIONS

FILING FEE - \$5.00
FOR EACH BUSINESS NAME

This Space For Use of
Recorder/County Clerk

ANNETTE J. EVANS
JAN 09 1992
DEPUTY

5
fk

STATEMENT OF ABANDONMENT OF USE OF FICTITIOUS BUSINESS NAME

In reference to the activity doing business as:

(1) SANTANA'S MEXICAN FOOD
(Fictitious Business Name[s])

(2) Located At: 1480 ROSECRANS ST
(Street Address - If No Street Address Assigned - Give Exact Location of Business Plus P.O. Box or Rural Route)
SAN DIEGO CA 92106
(City and Zip Code)

The following registrant(s) has (have) abandoned use of the fictitious business name:

(3) #1. ARTURO SANTANA-GALEGO #2. _____
(Full Name - Type/Print) (Full Name - Type/Print)
3211 Hugo ST _____
(Residence Address of State of Incorporation) (Residence Address or State of incorporation)
SAN DIEGO, CA 92106 _____
(City and Zip Code) (City and Zip Code)

#3. _____ #4. _____
(Full Name - Type/Print) (Full Name - Type/Print)

(Residence Address or State of Incorporation) (Residence Address or State of Incorporation)

(City and Zip Code) (City and Zip Code)

The fictitious business name referred to above was filed in San Diego County on
8-25 19 88 , and assigned File No. 8805855

(4) Signature of registrant: _____
ARTURO SANTANA-GALEGO
(Printed Name of Person Signing and if a Corporate Officer, also State Title)

This statement was filed with the Recorder/County Clerk of San Diego County on date indicated by file stamp above.

NEW ASSIGNED NO. 9200474

STATEMENT OF ABANDONMENT OF USE OF FICTITIOUS BUSINESS NAME

Form RCC 233 (Rev. 12/91)

EXHIBIT 8

PLEASE PRINT OR TYPE
FIRMLY. YOU ARE MAKING
MULTIPLE COPIES.

ANNETTE J. EVANS
RECORDER/COUNTY CLERK
P.O. Box 1750
San Diego, California 92112-4147
(619) 531-5210

This Space For Use of County Clerk.

F I L E D
Annette J. Evans, Clerk

JAN 09 1992

SEE REVERSE SIDE
FOR INSTRUCTIONS

FILING FEE

- \$13.00 - FOR FIRST BUSINESS NAME ON STATEMENT
- \$ 2.00 - FOR EACH ADDITIONAL BUSINESS NAME FILED ON SAME STATEMENT AND DOING BUSINESS AT THE SAME LOCATION
- \$ 2.00 - FOR EACH ADDITIONAL OWNER IN EXCESS OF ONE OWNER

FICTITIOUS BUSINESS NAME STATEMENT

THE NAME(S) OF THE BUSINESS(ES):

(1) SANTANA'S MEXICAN FOOD
(Print Fictitious Business Name(s) on Line Above)

(2) LOCATED AT: 1480 ROSECRANS ST.
(Street Address of Business - If No Street Address Assigned - Give Exact Location of Business Plus P.O. Box or Rural Route)
IN: SAN DIEGO, CA 92106
(City and Zip)

IS (ARE) HEREBY REGISTERED BY THE FOLLOWING OWNER(S):

(3) (#1) ABELARDO SANTANA-LEE
(Full Name - Type/Print)

5810 RILEY ST.
(Residence address if not incorporated)
(State of incorporation if incorporated)

SAN DIEGO, CA 92110
(City and Zip)

(#3)
(Full Name - Type/Print)

(Residence address if not incorporated)
(State of incorporation if incorporated)

(City and Zip)

(#2) CLAUDIA VALLARTA-SANTANA
(Full Name - Type/Print)

5810 RILEY ST.
(Residence address if not incorporated)
(State of incorporation if incorporated)

SAN DIEGO, CA 92110
(City and Zip)

(#4)
(Full Name - Type/Print)

(Residence address if not incorporated)
(State of incorporation if incorporated)

(City and Zip)

(4) This business is conducted by: an Individual Individuals - Husband and Wife a General Partnership
 a Limited Partnership a Corporation a Business Trust Co-Partners a Joint Venture
 an Unincorporated Association - other than a Partnership Other (Specify)

(5) THE REGISTRANT COMMENCED THE TRANSACTION OF BUSINESS ON: JAN 1, 1992

SIGNATURE OF REGISTRANT: [Signature]

CLAUDIA VALLARTA-SANTANA
(Print name of person signing and, if a Corporate Officer, also state title)

THIS STATEMENT WAS FILED WITH ANNETTE J. EVANS, RECORDER/COUNTY CLERK OF SAN DIEGO COUNTY
ON DATE INDICATED BY FILE STAMP ABOVE.

THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THE STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (see section 14400 et seq., Business and Professions Code). THIS FICTITIOUS BUSINESS STATEMENT NAME EXPIRES FIVE (5) YEARS FROM THE DATE IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK. IF YOU INTEND TO CONTINUE BUSINESS UNDER THIS NAME A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED PRIOR TO.

JAN 09 1992

[Signature]

ASSIGNED FILE NO. 32604755

EXHIBIT 8 PAGE 1 OF 2

File No: 92 00475

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
CERTIFICATE OF PUBLICATION

SANTANA'S MEXICAN FOOD
Clavdia Vallarta-Santana
1480 Rosecrans St.
San Diego, CA 92106-

FEB 14 1992
Annette J. Evans, Clerk

Affidavit of Publication
Heartland News Legal Transcript
10010 Campo Rd. (P.O. Box 188)
Spring Valley, CA 92077
(619) 670-6194

I, Paul D. Clark hereby certify that The Heartland News is weekly newspaper of general circulation within the provision of the Government Code of the State of California, printed and published in The County of San Diego, State of California, and the

FICTITIOUS BUSINESS NAME STATEMENT

FICTITIOUS BUSINESS
NAME STATEMENT
File No. 92 00475

The name of the business: SANTANA'S MEXICAN FOOD, located at: 1480 Rosecrans St., San Diego, CA 92106-, is (are) hereby registered by the following owner(s): Abelardo Santana-Lee 5801 Riley St. San Diego CA 92110- Clavdia Vallarta-Santana 5810 Riley St. San Diego CA 92110- This business conducted by: Individuals-Husband and Wife. The registrant commenced the transaction of business on 1/1/92. s/s: Clavdia Vallarta-Santana ; This statement was filed with Annette J. Evans, County Clerk of San Diego County on Jan. 9, 1992. Jan. 23, 20, Feb. 6, 13, 1992.

to which this certificate is annexed is a true and correct copy published in said newspaper on

Jan. 23, 20, Feb. 6, 13, 1992

I certify under penalty of perjury that the foregoing is true and correct, at Spring Valley, California, on

Feb. 13, 1992

Paul D. Clark

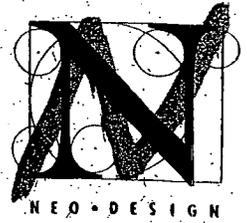
Signature

File No: 92 00475

EXHIBIT 8 PAGE 2 OF 2

EXHIBIT 9

September 10, 2003



To whom it may concern:

In early 1993 I helped my friend Claudia Santana in creating the current logo she uses in all her restaurants with the design: "Santana's Mexican Food/ Grill" ...es muy bueno!!! HOME OF FAMOUS CALIFORNIA BURRITO. At that time I also created for her a "character" that she currently uses as a seal for the GIFT CERTIFICATES.

There are several different forms that the logo was applied in, examples are: t-shirts, hats, paper bags, plates, business cards, cups, pens, menus, kids meals, etc. My company helped her until 1997. At this time Claudia bought her own designing program ADOBE ILLUSTRATOR so she could do all the designs on her own. Since she is my friend, I never charged her for any of my services and I suppose that is the reason why she bought the required program to access all her files. She has been doing all the advertising and changes to her logo since then.

If you need further assistance you can call me at (858) 459.2424 or, (858) 663.9900

Sincerely,

Maite B. Agahnia.

3604 Fourth Avenue

Suite No. 7

San Diego • CA

92103

Ph/ 619.491.0477

Fx/ 619.491.0467

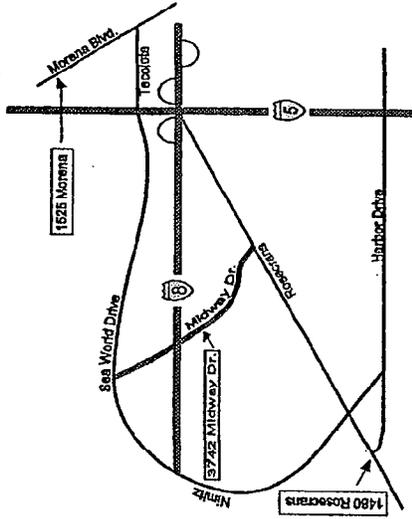
EXHIBIT 10

COMBINATION PLATES

(WITH RICE, BEANS & CHIPS)
(PLEASE ORDER BY NUMBER)

- 1 CARNE ASADA \$5.50
GRILLED CHICKEN
ACHIOTE CHICKEN
ACHIOTE FISH
CARNITAS
- 3 CORN OR 2 FLOUR TORTILLAS
- 2 ORDER OF 2 TACOS \$5.50
CARNE ASADA
BEEF
ACHIOTE CHICKEN
GRILLED CHICKEN
CARNITAS
- 3 4 BEEF ROLLED TACOS \$4.25
3 CHICKEN FLAUTAS
- 4 ORDER OF 1 BURRITO \$4.50
CARNE ASADA
GRILLED CHICKEN
ACHIOTE CHICKEN
CARNITAS
CALIFORNIA CARNE
CALIFORNIA ACHIOTE CHICKEN
CALIFORNIA GRILLED CHICKEN
CALIFORNIA ACHIOTE FISH
CALIFORNIA CARNITAS

ALL ITEMS INCLUDE TAX



SANTANAS

THANKS TO YOU WE HAVE BEEN SERVING YOU IN SAN DIEGO SINCE 1987. WE BELIEVE THAT FRESHER IS BETTER. THAT IS WHY OUR FOOD IS PREPARED EVERY DAY IN OUR PREMISES AND OUR TORTILLAS, MEAT, POULTRY AND PRODUCE ARE DELIVERED DAILY. WE USE 100% CORN OIL AND NO PRESERVATIVES. WE THANK YOU AGAIN FOR THE OPPORTUNITY OF LETTING US SERVE YOU AND TO YOU THAT HAVENT TRIED OUR FOOD WE DARE YOU TO DO SO!!! WE ALSO OFFER FREQUENT EATER CARDS, ATM MACHINE, A FRESH SALSA BAR WHEN YOU DINE-IN AT ALL OUR LOCATIONS AND FOR YOUR CONVENIENCE WE ARE

OPEN 24 HOURS

SANTANA'S

MEXICAN FOODS®

... ES Muy Bueno

HOME OF FAMOUS CALIFORNIA BURRITO

1480 ROSECRANS ST.
SAN DIEGO, CA 92106
(619) 226-2033

1525 MORENA BLVD.
SAN DIEGO, CA 92110
(619) 276-6010

3742 MIDWAY DR.
SAN DIEGO, CA 92110
(619) 523-9517

580 S. PACIFIC STREET
SAN MARCOS, CA 92069
(760) 736-4648

NOW OPEN

719 W. WASHINGTON ST.
SAN DIEGO, CA 92103

OPENING SOON
2303 GARNET AVE.
PACIFIC BEACH

WWW.SANTANASMEXICANFOOD.COM

BURRITOS

1 LB. CALIFORNIA BURRITO

WITH POTATOES, SALSA, CHEDDAR, CARNE ASADA *
ACHIOTE CHICKEN OR ACHIOTE FISH \$3.75
CARNE ASADA * GRILLED CHICKEN \$3.75
WITH SALSA AND GUACAMOLE
ACHIOTE CHICKEN \$3.75
1 LB. VEGGIE BURRITO \$3.75

WITH YOUR CHOICE OF ANY FOUR ITEMS:

BEANS* RICE* LETTUCE* POTATOES* GUACAMOLE
MEXICAN SALSA* CHEESE* SOUR CREAM OR
GRILLED MUSHROOMS \$3.50
CARNITAS BURRITO \$3.75
CHICKEN CHIMICHANGA \$5.00
SHRIMP BURRITO \$4.50

CHIPS

PLAIN \$0.75
CARNE ASADA CHIPS OR FRIES
WITH ENCHILADO & CHEEDAR
CHEESE, GUACAMOLE, SOUR CREAM,
MEXICAN SALSA, BEANS & CARNE
ASADA OR ACHIOTE CHICKEN
1/2 ORDER \$3.75 FULL ORDER \$5.75

TACOS

CARNE ASADA* BEEF TACO* GRILLED
OR ACHIOTE CHICKEN* CARNITAS \$2.00
4 BEEF ROLLED TACOS WITH CHEESE \$1.80
WITH GUACAMOLE AND CHEESE \$2.50
3 CHICKEN FLAUTAS WITH CHEESE \$2.00
WITH GUACAMOLE AND CHEESE \$2.50

TORTAS

(WITH LETTUCE AND GUACAMOLE)

CARNE ASADA* ACHIOTE CHICKEN \$3.50

QUESADILLAS

TECATE ACHIOTE CHICKEN OR CARNE ASADA
JACK CHEESE, SOUR CREAM & GUACAMOLE \$5.25
QUESOMUSH ACHIOTE CHICKEN OR CARNE
ASADA, JACK CHEESE AND MUSHROOMS \$5.25
VALLARTA GRILLED CHICKEN OR CARNE
ASADA, JACK CHEESE, BEANS AND MEXICAN SALSA
\$5.25
CHEEDAR \$2.75

BREAKFAST

5 A.M.-10:30 A.M.

CHORIZO OR MACHACA BURRITO \$3.50
BUENOS DIAS BURRITO 2 EGGS, POTATOES,
BACON, MEXICAN SALSA AND CHEESE \$3.50
PANCHO BURRITO 2 EGGS, HAM,
POTATOES AND CHEESE \$3.50
BREAKFAST TORTA YOUR CHOICE \$3.50

EXTRAS

(ONLY INSIDE YOUR ORDER)

RICE * BEANS * SOUR CREAM * CHEESE *
MEXICAN SALSA * LETTUCE \$0.50
GUACAMOLE OR GRILLED MUSHROOMS \$0.70

TOSTADAS

(WITH BEANS, SOUR CREAM, ENCHILADO & CHDR. CHEESE & LETTUCE)
BEANS * CHICKEN * CARNE ASADA \$2.50

SIDES

BEANS * RICE * SOUR CREAM 8OZ \$1.50
MEXICAN SALSA
GUACAMOLE * CHEESE
CARNE ASADA * ACHIOTE
OR GRILLED CHICKEN 8OZ \$3.00

DRINKS

FRESH LEMONADE * HORCHATA * JAMAICA
* TAMARINDO * GUAYA * PINA * PEPSI * DIET
PEPSI * MOUNTAIN DEW * DR PEPPER *
ORANGE SLICE 24 OZ \$1.30
32 OZ \$1.90

BOTTLED WATER*

8OZ MILK * 8OZ ORANGE JUICE \$1.00

DESSERT

VANILLA FLAN (CUSTARD) \$1.75

SANTANA'S

MEXICAN FOOD

... Es Muy Bueno

BURRITOS

- 1 LB. CALIFORNIA BURRITO**
WITH POTATOES, SALSA, CHEDDAR, CARNE ASADA ACHIOTE
CHICKEN OR ACHIOTE FISH \$3.75
- CARNE ASADA* GRILLED CHICKEN** \$3.75
WITH SALSA AND GUACAMOLE \$3.75
- ACHIOTE CHICKEN** \$3.75
- 1B. VEGGIE BURRITO** WITH YOUR CHOICE OF ANY FOUR ITEMS:
BEANS, RICE, LETTUCE, POTATOES, CABBAGE, MEXICAN SALSA,
CHEESE, SOUR CREAM OR GRILLED MUSHROOMS \$3.50
- CARNITAS BURRITO** \$3.75
- CHICKEN CHIMICHANGA** \$5.00
- SHRIMP BURRITO** \$4.50

CHIPS

- PLAIN** \$0.75
- CARNE ASADA CHIPS OR FRIES** WITH ENCHILADO &
CHEDDAR CHEESE, GUACAMOLE, SOUR CREAM, MEXICAN SALSA,
BEANS & CARNE ASADA OR ACHIOTE CHICKEN
- 1/2 ORDER \$3.75 FULL ORDER \$5.75**

TACOS

- CARNE ASADA, BEEF TACO, GRILLED OR ACHIOTE**
- CHICKEN CARNITAS** \$2.00
- 4 BEEF ROLLED TACOS** WITH CHEESE \$1.80
WITH GUACAMOLE AND CHEESE \$2.50
- 3 CHICKEN FLAUTAS** WITH CHEESE \$2.00
WITH GUACAMOLE AND CHEESE \$2.50

COMBINATION PLATES (WITH RICE, BEANS & CHIPS)

(PLEASE ORDER BY NUMBER & LETTER)

- 1A) CARNE ASADA** **1B) GRILLED CHICKEN**
- 1C) ACHIOTE CHICKEN** **1D) ACHIOTE FISH**
3 CORN OR 2 FLOUR TORTILLAS \$5.50
- 2) ORDER OF 2 TACOS** **2A) CARNE ASADA**
- 2B) BEEF** **2C) ACHIOTE CHICKEN** \$5.50
- 2D) GRILLED CHICKEN**
- 3A) 4 BEEF ROLLED TACOS** \$4.25
- 3B) 3 CHICKEN FLAUTAS**
- 4) ORDER OF 1 BURRITO** **4A) CARNE ASADA**
- 4B) GRILLED CHICKEN** **4C) ACHIOTE CHICKEN**
- 4D) CALIFORNIA CHICKEN** **4E) CALIFORNIA CARNE** \$4.50

TORTAS (WITH LETTUCE AND GUACAMOLE)

- CARNE ASADA, ACHIOTE CHICKEN** \$3.50

1480 ROSECRANS ST.
SAN DIEGO, CA 92106
(619) 286-2033

3742 MIDWAY DR.
SAN DIEGO, CA 92110
(619) 523-9517

580 S. PACIFIC STREET
SAN MARCOS, CA 92069
(760) 736-8648

OPENING SOON
2303 GARNET AVE.
PACIFIC BEACH
719 WASHINGTON ST.
HILLCREST

1525 MORENA BLVD.
SAN DIEGO, CA 92110
(619) 276-6010

THANKS TO YOUR WE HAVE BEEN SERVING YOU IN
SAN DIEGO SINCE 1987. WE BELIEVE THAT FRESHER
IS BETTER THAT IS WHY OUR FOOD IS PREPARED
EVERY DAY IN OUR PREMISES AND OUR TORTILLAS,
MEAT, POULTRY AND PRODUCE ARE DELIVERED
DAILY. WE USE 100% CORN OIL AND NO
PRESERVATIVES. WE THANK YOU AGAIN FOR THE
OPPORTUNITY OF LETTING US SERVE YOU AND
TO YOU THAT HAVEN'T TRIED OUR FOOD WE DARE
YOU TO SO!!! WE ALSO OFFER FREQUENT EATER
CARDS, ATM MACHINE, A FRESH SALSA BAR
WHEN YOU DINE-IN AT ALL OUR LOCATIONS AND
FOR YOUR CONVENIENCE WE ARE

OPEN 24 HOURS

HOME OF FAMOUS CALIFORNIA BURRITO

QUESADILLAS

- TECATE** ACHIOTE CHICKEN OR CARNE ASADA, JACK CHEESE,
SOUR CREAM & GUACAMOLE \$5.25
- QUESOMUSH** ACHIOTE CHICKEN OR CARNE ASADA,
JACK CHEESE AND MUSHROOMS \$5.25
- VALLARTA** GRILLED CHICKEN OR CARNE ASADA, JACK CHEESE,
BEANS AND MEXICAN SALSA \$5.25
- CHEDDAR** \$2.75

BREAKFAST

5 A.M. - 10:30 A.M.

- CHORIZO OR MACHACA BURRITO** \$3.50
- BUENOS DIAS BURRITO** 2 EGGS, POTATOES, BACON,
MEXICAN SALSA, AND CHEESE \$3.50
- PANCHO BURRITO** 2 EGGS, HAM, POTATOES AND CHEESE \$3.50
- BREAKFAST TORTA** YOUR CHOICE \$3.50

EXTRAS

- ONLY INSIDE YOUR ORDER**
- RICE, BEANS, SOUR CREAM, CHEESE,** \$0.50
- MEXICAN SALSA, LETTUCE**
- GUACAMOLE OR GRILLED MUSHROOMS** \$0.70

TOSTADAS

- (WITH BEANS, SOUR CREAM, ENCHILADO & CHDR CHEESE & LETTUCE)
- BEANS, CHICKEN, CARNE ASADA** \$2.50

SIDES

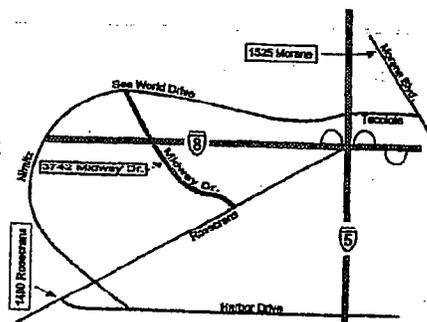
- BEANS, RICE, SOUR CREAM** 8 OZ. \$1.50
- MEXICAN SALSA**
- GUACAMOLE, CHEESE**
- CARNE ASADA, ACHIOTE**
- OR GRILLED CHICKEN** 8 OZ. \$3.00

DRINKS

- FRESH LEMONADE, HORCHATA, JAMAICA,**
- TAMARINDO, GUAVA, PINA, COKE, PEPSI,**
- DIET PEPSI, MOUNTAIN DEW, SIERRA MIST,**
- ORANGE SLICE** 24 OZ. \$1.50 32 OZ. \$2.25
- BOTTLED WATER** \$1.00
- 8 OZ. MILK, 6 OZ. ORANGE JUICE** \$1.00

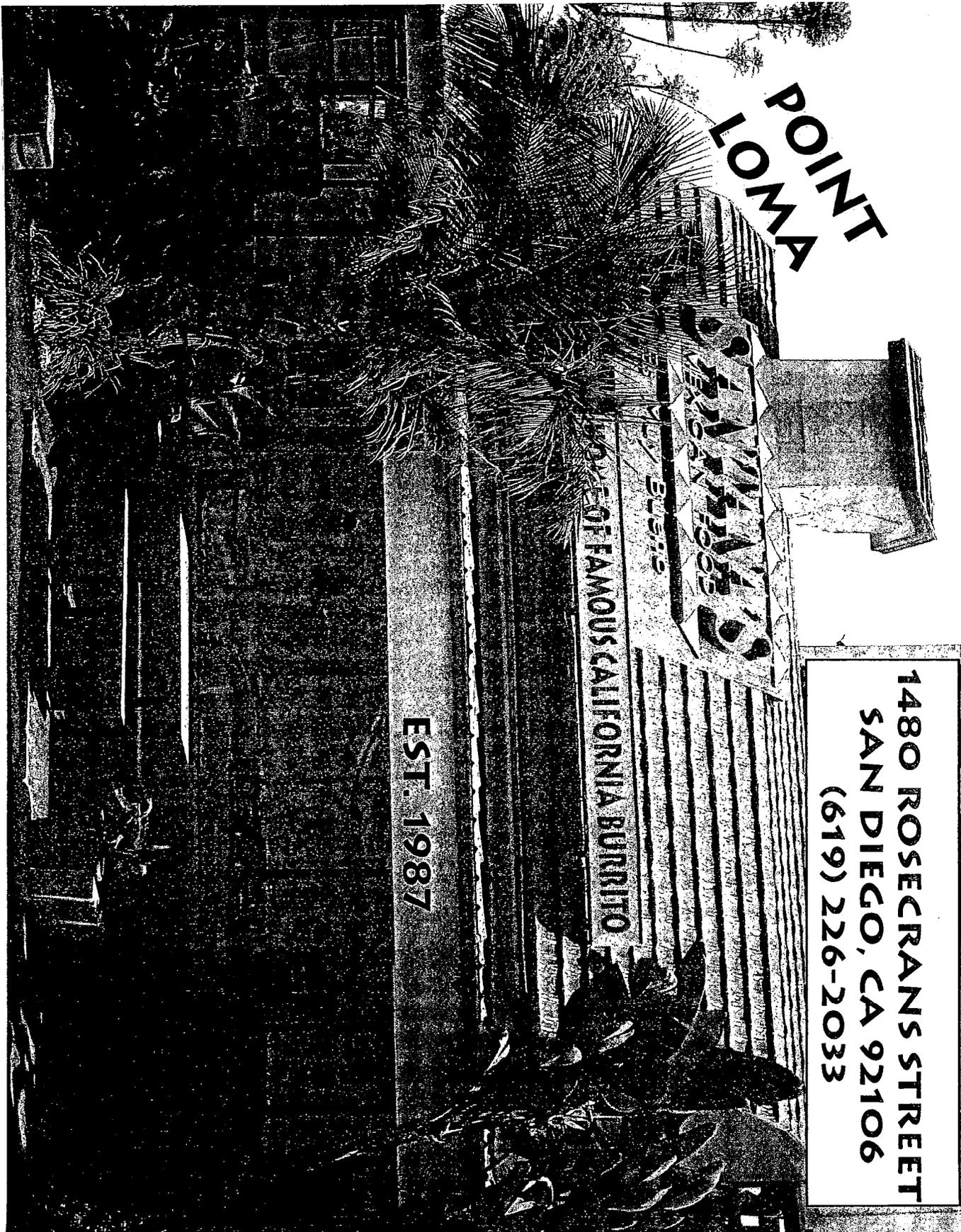
DESSERT

- VANILLA FLAN (CUSTARD)** \$1.75



SANTANAS

WWW.SANTANASMEXICANFOOD.COM
ALL ITEMS INCLUDE TAX
PRICES SUBJECT TO CHANGE



This is a proof of your ad that will appear in the directory indicated below

PLEASE CHECK FOR ACCURACY:

- ✓ NAME
- ✓ TELEPHONE NUMBER
- ✓ ADDRESS
- ✓ YELLOW PAGES HEADING
- ✓ COPY CONTENT
- ✓ NO SIZE OR COLOR CHANGE

This Proof Must Be Returned Within 5 Days To:

Yellow Book USA/NDC

2552 WALNUT AVE, TUSTIN, CA 92780 ATTN: PUBLISHING DEPARTMENT

or fax to: (714) 505-8696

AD APPROVED

Signed _____

Date: _____

I understand that per my signature, this display advertisement will appear as specified on this final, unchanged proof.

REVISIONS REQUIRED

Signed [Signature]

Date: 8-15

I understand that per my signature, this display advertising will be revised as I have indicated on this proof and I will not receive a revised proof.

Certain ads appearing in 4-column books will appear at approx. 85% of size shown. Ads appearing in 3-column books and all Full Page/Half Page/Trip/Quarter Page ads will appear at 100% of size shown.

PLEASE NOTE: In the event this proof is NOT returned, the advertisement will be published as shown.

Yellow Book USA/NDC uses industry standard telephone directory grade paper that is different in texture and composition from the paper used to print your advertising proof below. The publisher cannot guarantee nor warrant the advertising quality shown below can be duplicated when printed on standard telephone directory grade paper.

SANTANA'S
MEXICAN FOOD

... Es Muy Bueno

Dine-In or Take-Out

1480 ROSECRANS ST. 1525 MORENA BLVD. 3742 MIDWAY DR.
(619) 226-2033 (619) 276-6010 (619) 523-9517

OPEN 24 HOURS www.SantanasMexicanFood.com

HOME OF FAMOUS CALIFORNIA BURRITO

366255 - San Diego
2QC 8/6/2003 2:41:51 PM-1
Santana's Mexican Food
479111 Proof processed: 08/08/2003 15:58:10
5852 Box Canyon Rd LaJolla, CA 92037-7405 858 551-2033
SDM11918A1
RESTAURANTS

Santana's Mexican Food
5852 Box Canyon Rd
LaJolla, CA 92037-7405

— Trade Secret / Commercially Sensitive — Material

SG00351

1996

24



... Es Muy Bueno

HRS

1480 ROSECRANS ST.
SAN DIEGO CA. 92106
226-2033

1525 MORENA BLVD.
SAN DIEGO CA. 92110
276-6010

Santana's Mexican Food Restaurant is offering "FOOD CERTIFICATES" so you can give as incentives and motivators to your employees. It's a fact that the better you treat your employees the more efficient they will be, so now you can give this incentive to your employees and at the same time save some money.

Right now we have certificates that are worth \$5 dollars. This certificates have no cash value. The employee can purchase anything in both our locations. We will supply you with every certificate, a menu that shows everything that we have, our addresses, phone numbers and map showing both Locations.

Below is a price chart based on quantity of certificates that you purchase, the more you buy, the more you save.

Certificates	Value	You Pay	You Save
25	\$ 125.00	\$ 112.50	10%
50	\$ 250.00	\$ 220.00	12%
100	\$ 500.00	\$ 425.00	15%
200	\$ 1,000.00	\$ 800.00	20%

To order please call 276-2628 you can ask for Claudia or Miguel, or leave your message and we will return your call as soon as possible.



CUSTOMER	PATCO, Inc	LINE#	73300
<input checked="" type="radio"/> SPOT	<input type="radio"/> RANGE	ARTIST	<i>[Signature]</i>
<input type="radio"/> SPOT	<input type="checkbox"/> SPOT	DATE	November 12 1998
COLOR	COLOR	GROUP	ISA
COLOR	COLOR	ALPHA CODE	

Network is APPROVED.

Network is NOT APPROVED, corrections will be made as noted.

SIGNATURE *[Signature]* DATE 11-24-98



... Es Muy Bueno

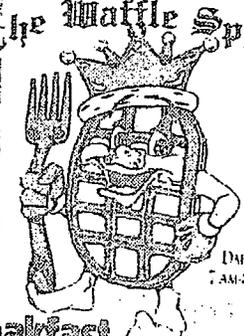


FUN
MEAL

SG00229

Grand Opening Special
GIANT Banana-Nut Waffle \$3.95
 With this at
 10% DISCOUNT OFF TOTAL
 AND COFFEE
 1333 HOTEL CIRCLE SO. (KING'S INN)
 297-2231
 LOOK FOR US IN FREE-MENUS-BY-FAX!
Not just for breakfast.
 Burgers • Sandwiches • Steak • Chicken • Salads • Dessert

The Waffle Spot

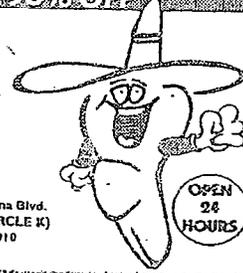


DAILY
7 AM-3 PM

BUY ANY ITEM & GET THE SECOND OF EQUAL OR LESSER VALUE 50% OFF

SANTANA'S MEXICAN FOOD
 ... Es Muy Bueno

1490 Rosecrans St. (corner w/ Harbor Dr.) 216-7033
 1525 Morena Blvd. (next to CIRCLE K) 276-6010



OPEN 24 HOURS

ALL-YOU-CAN-EAT
Dinner Buffet for Two \$14.99
 Sushi, Japanese & Chinese Food,
 Salads, Fruit & Dessert,
 Low Salt • Low Oil

Salads • Gyros • Hummus • Moussaka

CAFE

HEALTHY & DELICIOUS FOOD
 Greek & Middle Eastern Specialties
 Catering & party facility available
 5752 La Jolla Blvd. • 454-5733 • Open 7 days a week

DINNER FOR TWO \$10.95

Dinner includes soup, egg roll, fried wonton, fried rice and your choice of two different entrees, follow:

- Beef Teriyaki
- Chicken Teriyaki
- Pork Teriyaki
- Sweet 'n' Sour pork
- Shrimp lobster sauce
- Chicken rice roll
- Chicken chicken
- King Pao chicken
- Delicium vegetables

MONGOLIAN BBQ \$6 SPECIAL
 (only available Monday through Saturday. Dining room only.)

SHANGHAI

1930 Quivira Way Marina Village on the Bay 461-6737
 4055 54th Street (corner of University Ave.) 461-2143
 7770 Regents Road (La Jolla Village) 457-6888

Calendar RESTAURANTS

icehouses, decorated to look like a study and frequented by students. Immaculate and offers sandwiches, soups, salads, a variety of drinks, and excellent desserts. Open 8:00 a.m. to midnight daily.

WRAPPS RESTAURANT 1731 University Avenue (near Park Boulevard) 298-7651. If you're searching for "something different," try this small cafe that prepares food from the Republic of Georgia, in southeastern Europe. The cuisine is spicy and relies on walnuts and pepper. Wrapps serves many items in a wrap of soft *lavash* bread, and that includes stews or vegetarian dishes. Russian dishes also available, and these include stuffed cabbage, beet stew with dumplings, lamb with potatoes, and *shakli*. Georgian entrees include beet, lamb, cornish hen. Very clean premises, good service, unusual food. Closed Sunday. Open Monday through Saturdays for lunch and dinner. Low.

DOWNTOWN

ANTHONY'S FISH GROTTO 1360 South Harbor Drive at Ash Street 252-1104. For fresh seafood—fish, shellfish, chips, and gigantic fresh fish specials. Anthony's still goes to the head of the class for stability of product, good-sized portions, time-honored preparation, and low cost. Try the squid roller for a high-meat, high-protein lunch through dinner. Reservations not accepted. Moderate.

ASTOR RESTAURANT 728 Fifth Avenue (near G Street), Gastlamp Quarter 332-8844. The room is very attractive and an open hearth for wood-fired pizzas adds to the festivities. First courses, such as potato, salads with filet mignon, salads with seafood, are first rate. However, the same meat-porcini mushroom sauce is used on pasta, and on chicken. Read the menu carefully so you don't sweat your spices. In addition to red beans and rice and seafood gumbo, you'll love the chicken orzo-bile, duck esplanade, trout, smoked pork chops with tatapeno confit, a stuffed, crunchy eggplant, and bread pudding. Sunday champagne brunch, \$12.95, includes bignoni.

March grass dinners. Monday nights only, include soup, salad, entree, dessert, for \$12.95. You'll save yourself a trip to New Orleans by dining here. Open for lunch Wednesday through Sunday 11:30 a.m. to 3:00 p.m.; brunch Sunday dinners nightly. Moderate.

BRAVO BISTRO 894 Fourth Avenue, 251-8888. Mediterranean specialties from Portugal, Spain, France, and Italy are featured here. For unusual fare, try chicken sardina, prepared with spinach, goat cheese, and pine nuts; lamb loin over consoumous with rare tender Portuguese pork, with lamb in a paprika garlic sauce; two different styles of emita and cataplan, which is a seafood stew served over saffron rice. Very pleasant food and atmosphere. Small outdoor seating area available. Open for dinner Wednesday through Sunday. Low to expensive.

DAKOTA GRILL AND SPIRITS 911 Town Avenue 253-3214. The

here. The restaurant is a smoke-free; you may time out look down on Fifth Avenue, dine at street level. A simple, satisfying meal consists of 1 soup plus Caesar salad. And look the roasted garlic pizza topped with Gorgonzola cheese, onions, and a whole bulb of garlic. It's very rich, but a course. Open daily, lunch through Friday; dinner, weekdays from 2:30 p.m. to 1:00 to upper moderate. News Club 60, downtown.

DOBSON'S 936 Broadway 241-6771. Best bets here remain nature soup, mussel bisque, and the nightly fresh fish entrees, of lamb. Monday through Friday, price meat for \$27.95, soup, salad, choice of entree or fries, dessert. 3 priority reservations. Excellent service. Sunday lunch, Monday through Friday; Monday through Friday dinner, Monday through late hours on the weekends. Expensive.

HARBOR HOUSE 844 S. Drive, seaport village 252-1104. Two-level building and the harbor are major attractions. Seafood predominant, but chicken and steak are also available. 40 main seats. 210, so don't expect many. Free stations of various no-originate, open station for lunch, afternoon, and dinner, as well as fresh fish, mussels, oysters, and breads. Open 11:30 a.m. to 1:30 p.m. Monday through Friday.

LA FAZZA'S 1038 Avenue 216. A solid old-fashioned restaurant, it's a good place to enjoy wine and beer as well as seafood. The menu is very extensive, adds daily specials and dessert, and charming the Monday through Thursday to midnight. Friday through Sunday, 1:00 p.m. to 2:00 a.m. 3:00 p.m. to midnight.

MISTER A'S 1350 Market 259-1377. The views of the city are outstanding, even if the waiters and the menu are a bit boring. It's high energy, a menu from 1900 p.m. on, but it's a daily lunch Monday through Thursday nights food served from 1:00 p.m. to midnight. Friday, Saturday, and Sunday 1:00 p.m. to 1:00 a.m.

RJ'S RIPTIDE BREWERY 1000 Avenue 1 and E. 251-7000. Arrives between 10:00 a.m. and 1:00 p.m. is a dollar and one of the great \$1.00, other appetizers are \$1.00. Burgers with its standard steamed meaties and copper top burgers as a backdrop to this menu. The menu is multi-cultural and one of the best bets here are the sausage burgers, and the burger with the empanada, and the burger with the empanada. Open Monday through Saturday 11:00 a.m. to 1:00 a.m. on Sunday 11:00 a.m. to 1:00 a.m. to moderate.

SALLY'S 1141 Regency 252-1104. Let Pater's seafood and fish be the featured product. The restaurant is a specialty restaurant of the sea. The menu is a variety of seafood, including shrimp. The dining room has some of the best seafood in the city. It has a coffee shop and a bar.

Welcome to Entertainment® '98

The following are your coupons as they appear in our publications:
**Publications may include Gold C®, Entertainment® Ultimate,
 Entertainment® Values and Dinner On Us Clubsm**

S entertainment '98

ONE MENU ITEM

SANTANA'S
MEXICAN FOOD

Cordially invites you to enjoy one complimentary MENU ITEM when a second MENU ITEM of equal or greater value is purchased.

valid anytime

valid thru november 1, 1998

893

For valid Gold C, Values, Ultimate, Dinner On Us Club, Entertainment® Ultimate, Entertainment® Values and Entertainment® Values & Dinner On Us Club, see coupon rules. Coupon valid thru purchase of one or both for each.

S entertainment '98

ONE MENU ITEM

SANTANA'S
MEXICAN FOOD

Cordially invites you to enjoy one complimentary MENU ITEM when a second MENU ITEM of equal or greater value is purchased.

valid anytime

valid thru september 30, 1998

A46

For valid Gold C, Values, Ultimate, Dinner On Us Club, Entertainment® Ultimate, Entertainment® Values and Entertainment® Values & Dinner On Us Club, see coupon rules. Coupon valid thru purchase of one or both for each.

S entertainment '98

ONE CALIFORNIA BURRITO

SANTANA'S
MEXICAN FOOD

Cordially invites you to enjoy one complimentary CALIFORNIA BURRITO when a second CALIFORNIA BURRITO of equal or greater value is purchased.

valid anytime

valid thru november 1, 1998

895

For valid Gold C, Values, Ultimate, Dinner On Us Club, Entertainment® Ultimate, Entertainment® Values and Entertainment® Values & Dinner On Us Club, see coupon rules. Coupon valid thru purchase of one or both for each.

EXHIBIT 11

7

SANT.002T

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Santana's Grill, Inc.)
Reg. No.	:	2,682,978)
Registered	:	February 4, 2003)
Mark	:	SANTANA'S MEXICAN FOOD ... ES MUY BUENO Etc. and Design)
Law Office	:	106)

REQUEST FOR CORRECTED REGISTRATION CERTIFICATE DUE TO ERROR BY REGISTRANT UNDER 37 C.F.R. § 2.175

BOX POST REG FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

Dear Sir:

The Registrant in the above-identified Registration hereby states that the certificate of registration for this mark contains an error that occurred in good faith and through the fault of Registrant, and therefore requests issuance of a Certificate of Correction pursuant to Section 7(h) of the Trademark Act of July 5, 1946, as amended.

The date of first use of the mark and the date of first use of the mark in commerce originally provided in Application Serial No. 76/345,542 were the dates the Applicant first used the words "Santana's Mexican Food" in conjunction with its services. The mark for which registration was applied, combining these words with design elements, was not developed and used until about 1993. Therefore, while the Applicant used the words alone prior to 1993, the date of first use of the above-referenced composite mark is on or before 1993 and the date of first

07/2003 TSMITH 00000029 2682978

FC:6212 100.00 OP

Mark : SANTANA'S MEXICAN FOOD ... ES MUY BUENO Etc. and Design
Reg. No. : 2,682,978

use in commerce is on or before 1993. This error arose in good faith as the Applicant for this mark provided the dates of use for the words alone and not for the composite mark that was registered.

The original certificate of registration is enclosed herewith for endorsement of the correction. The fee of \$100 required by Rule 2.6(a)(9) is submitted herewith.

Mark : SANTANA'S MEXICAN FOOD ... ES MUY BUENO Etc. and Design
Reg. No. : 2,682,978

Declaration Under 37 C.F.R. § 2.20

I, Claudia Santana, declare that I am Vice President of Santana's Grill, Inc. and am authorized to make this declaration on its behalf; that I executed the application filed as Serial No. 76/345,542 on November 27, 2001, which matured into the registration now sought to be corrected; that the term "Santana's Mexican Food" has been in use in conjunction with restaurant service since as early as 1988, in accordance with the original application; that the mark registered and incorporating this term was not used or used in commerce until about 1993; that I misunderstood what date was to be provided in the application and mistakenly believed it was the date of use or use in commerce of the words "Santana's Mexican Food"; that the attorney who prepared Application, Serial No. 76/345,542 did not provide legal representation of the Registrant Corporation until 2001 and therefore relied on information I provided relating to the dates of first use and first use in commerce; that this error occurred without any intent to deceive the U.S. Patent and Trademark Office or the public when the dates of use and use in commerce were provided and when Application Serial No. 76/345,542 was executed.

I declare further that all statements made herein of my own knowledge and belief are believed to be true and these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this document and the registration to which it relates.

SANTANA'S GRILL, INC.

Dated: 10-20-03

By: Claudia Santana

Name: CLAUDIA V. SANTANA

Title: Vice President

EXHIBIT 12

(FILED SEPARATELY UNDER SEAL)

EXHIBIT 13



GUARANTY OF LEASE

MCB COMMERCIAL REAL ESTATE GROUP, INC.
BROKERAGE AND MANAGEMENT
LICENSED REAL ESTATE BROKER

This Guaranty of Lease (the "Guaranty") is attached to and made part of that certain real estate Lease (the "Lease") dated November 21, 1997, between Lear Investments, a California General Partnership, as Landlord, and Arturo L. Santana, as Tenant, covering the Property commonly known as 411 Broadway, El Cajon, California. The terms used in this Guaranty shall have the same definitions as set forth in the Lease. In order to induce Landlord to enter into the Lease with Tenant, Abelardo Santana and Claudia V. De Santana

(("Guarantors"), have agreed to execute and deliver this Guaranty to Landlord. Each Guarantor acknowledges that Landlord would not enter into the Lease if each Guarantor did not execute and deliver this Guaranty to Landlord.

- 1. Guaranty.** In consideration of the execution of the Lease by Landlord and as a material inducement to Landlord to execute the Lease, each Guarantor hereby irrevocably, unconditionally, jointly and severally guarantees the full, timely and complete (a) payment of all rent and other sums payable by Tenant to Landlord under the Lease, and any amendments or modifications thereto by agreement or course of conduct, and (b) performance of all covenants, representations and warranties made by Tenant and all obligations to be performed by Tenant pursuant to the Lease, and any amendments or modifications thereto by agreement or course of conduct. The payment of those amounts and performance of those obligations shall be conducted in accordance with all terms, covenants and conditions set forth in the Lease, without deduction, offset or excuse of any nature and without regard to the enforceability or validity of the Lease, or any part thereof, or any disability of Tenant.
- 2. Landlord's Rights.** Landlord may perform any of the following acts at any time during the Lease Term, without notice to or assent of any Guarantor and without in any way releasing, affecting or impairing any of Guarantor's obligations or liabilities under this Guaranty: (a) alter, modify or amend the Lease by agreement or course of conduct, (b) grant extensions or renewals of the Lease, (c) assign or otherwise transfer its interest in the Lease, the Property, or this Guaranty, (d) consent to any transfer or assignment of Tenant's or any future tenant's interest under the Lease, (e) release one or more Guarantor, or amend or modify this Guaranty with respect to any Guarantor, without releasing or discharging any other Guarantor from any of such Guarantor's obligations or liabilities under this Guaranty, (f) take and hold security for the payment of this Guaranty and exchange, enforce, waive and release any such security, (g) apply such security and direct the order or manner of sale thereof as Landlord, in its sole discretion, deems appropriate, and (h) foreclose upon any such security by judicial or nonjudicial sale, without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the indebtedness has been paid.
- 3. Tenant's Default.** This Guaranty is a guaranty of payment and performance, and not of collection. Upon any breach or default by Tenant under the Lease, Landlord may proceed immediately against Tenant and/or any Guarantor to enforce any of Landlord's rights or remedies against Tenant or any Guarantor pursuant to this Guaranty, the Lease, or at law or in equity without notice to or demand upon either Tenant or any Guarantor. This Guaranty shall not be released, modified or affected by any failure or delay by Landlord to enforce any of its rights or remedies under the Lease or this Guaranty, or at law or in equity.
- 4. Guarantor's Waivers.** Each Guarantor hereby waives (a) presentment, demand for payment and protest of non-performance under the Lease, (b) notice of any kind including, without limitation, notice of acceptance of this Guaranty, protest, presentment, demand for payment, default, nonpayment, or the creation or incurring of new or additional obligations of Tenant to Landlord, (c) any right to require Landlord to enforce its rights or remedies against Tenant under the Lease, or otherwise, or against any other Guarantor, (d) any right to require Landlord to proceed against any security held from Tenant or any other party, (e) any right of subrogation and (f) any defense arising out of the absence, impairment or loss of any right of reimbursement or subrogation or other right or remedy of Guarantors against Landlord or any such security, whether resulting from an election by Landlord, or otherwise. Any part payment by Tenant or other circumstance which operates to toll any statute of limitations as to Tenant shall operate to toll the statute of limitations as to Guarantor.
- 5. Separate and Distinct Obligations.** Each Guarantor acknowledges and agrees that such Guarantor's obligations to Landlord under this Guaranty are separate and distinct from Tenant's obligations to Landlord under the Lease. The occurrence of any of the following events shall not have any effect whatsoever on any Guarantor's obligations to Landlord hereunder, each of which obligations shall continue in full force or effect as though such event had not occurred: (a) the commencement by Tenant of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended or replaced, or any other applicable federal or state bankruptcy, insolvency or other similar law (collectively, the "Bankruptcy Laws"), (b) the consent by tenant to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or similar official of Tenant or for any substantial part of its property, (c) any assignment by Tenant for the benefit of creditors, (d) the failure of Tenant generally to pay its debts as such debts become due, (e) the taking of corporate action by Tenant in the furtherance of any of the foregoing; or (f) the entry of a decree or order for relief by a court having jurisdiction in respect of Tenant in any involuntary case under the Bankruptcy Laws, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Tenant or for any substantial part of its property, or ordering the winding-up or liquidation of any of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days. The liability of Guarantors under this Guaranty is not and shall not be affected or impaired by any payment made to Landlord under or related to the Lease for which Landlord is required to reimburse Tenant pursuant to any court order or in settlement of any dispute, controversy or litigation in any bankruptcy, reorganization, arrangement, moratorium or other federal or state debtor relief proceeding. If, during any such proceeding, the Lease is assumed by Tenant or any trustee, or thereafter assigned by Tenant or any trustee to a third party, this Guaranty shall remain in full force and effect with respect to the full

Initials ASL
ETS

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Form No. 6462 Rev 4/91

SG00062

performance of Tenant, such trustee or any such third party's obligations under the Lease. If the Lease is terminated or rejected during any such proceeding, or if any of the events described in Subparagraphs (e) through (f) of this Paragraph 5 occur, as between Landlord and each Guarantor, Landlord shall have the right to accelerate all of Tenant's obligations under the Lease and each Guarantor's obligations under this Guaranty. In such event, all such obligations shall become immediately due and payable by Guarantors to Landlord. Guarantors waive any defense arising by reason of any disability or other defense of Tenant or by reason of the cessation from any cause whatsoever of the liability of Tenant.

6. **Subordination.** All existing and future advances by Guarantor to Tenant, and all existing and future debts of Tenant to any Guarantor, shall be subordinated to all obligations owed to Landlord under the Lease and this Guaranty.

7. **Successors and Assigns.** This Guaranty binds each Guarantor's personal representatives, successors and assigns.

8. **Encumbrances.** If Landlord's interest in the Property or the Lease, or the rents, issues or profits therefrom, are subject to any deed of trust, mortgage or assignment for security, any Guarantor's acquisition of Landlord's interest in the Property or Lease shall not affect any of Guarantor's obligations under this Guaranty. In such event, this Guaranty shall nevertheless continue in full force and effect for the benefit of any mortgagee, beneficiary, trustee or assignee or any purchaser at any sale by judicial foreclosure or under any private power of sale, and their successors and assigns. Any married Guarantor expressly agrees that Landlord has recourse against any Guarantor's separate property for all of such Guarantor's obligations hereunder.

9. **Guarantor's Duty.** Guarantors assume the responsibility to remain informed of the financial condition of Tenant and of all other circumstances bearing upon the risk of Tenant's default, which reasonable inquiry would reveal, and agree that Landlord shall have no duty to advise Guarantors of information known to it regarding such condition or any such circumstance.

10. **Landlord's Reliance.** Landlord shall not be required to inquire into the powers of Tenant or the officers, employees, partners or agents acting or purporting to act on its behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

11. **Incorporation of Certain Lease Provisions.** Each Guarantor hereby represents and warrants to Landlord that such Guarantor has received a copy of the Lease, has read or had the opportunity to read the Lease, and understands the terms of the Lease. The provisions in the Lease relating to the execution of additional documents, legal proceedings by Landlord against Tenant, severability of the provisions of the Lease, interpretation of the Lease, notices, waivers, the applicable laws which govern the interpretation of the Lease and the authority of the Tenant to execute the Lease are incorporated herein in their entirety by this reference and made a part hereof. Any reference in those provisions to "Tenant" shall mean each Guarantor and any reference in those provisions to the "Lease" shall mean this Guaranty, except that (a) any notice which any Guarantor desires or is required to provide to Landlord shall be effective only if signed by all Guarantors and (b) any notice which Landlord desires or is required to provide to any Guarantor shall be sent to such Guarantor at such Guarantor's address indicated below, or if no address is indicated below, at the address for notices to be sent to Tenant under the Lease.

Signed on November 21, 1997, 19


Abelardo Santana

2067 Cecelia Terrace

San Diego, Ca. 92110

Address

By: _____

Its: _____

Signed on November 21, 1997, 19


Claudia V. De Santana

2067 Cecelia Terrace

San Diego, Ca. 92110

Address

By: _____

Its: _____

CONSULT YOUR ATTORNEY - This document has been prepared for approval by your attorney. No representation or recommendation is made by CB Commercial Real Estate Group, Inc. or the Southern California Chapter of the Society of Industrial Realtors,® Inc., or the agents or employees of either of them as to the legal sufficiency, legal effect, or tax consequences of this document or the transaction to which it relates. These are questions for your attorney.

EXHIBIT 14

RESTAURANT
PACKAGE
DECLARATIONS

super

MEMBER OF FARMERS INSURANCE GROUP OF COMPANIES
HOME OFFICE: 4680 Wilshire Blvd., Los Angeles, California 90010



ABELARDO & CLAUDIA SANTANA AND ARTURO

Name: **SANTANA**
Insured: **DBA: SANTANAS MEXICAN GRILL**
Mailing Address: **411 BROADWAY
EL CAJON CA. 92021**

K353250

Prod. Count

Prematic Acc't. No.

99-51-0376	60216-83-75
Agent	Policy Number

2. Insured Location same as mailing address unless otherwise stated:

The named insured is an individual unless otherwise stated:
Type of Business: **RESTAURANT**

Partnership Corp. Other

3. Policy Period from **12/18/97** (Not prior to time applied for) to **12/18/98**

at **NOON Standard Time (12:01 AM in California, Oregon, Arkansas, Washington, Idaho, and Oklahoma.)** This policy will continue for successive policy periods as follows: if we elect to continue this insurance, we shall renew this policy if you pay the required renewal premium for each successive policy period subject to our premiums, rules, and forms then in effect. You must pay us prior to the end of the current policy period or else this policy will expire.

DO NOT PAY THE AMOUNT DUE.
YOUR POLICY IS ON THE MONTHLY PAYMENT PLAN.
A premium charge or reduction of premium will be divided into equal monthly payments from the amount payable to the insured monthly and is to be included in your monthly statement from

Mortgagee:

PREMATIC SERVICE CORP.

There is a change in an existing policy. AN ADJUSTMENT WILL BE MADE in your future monthly statements. Please pay the amount shown on the outstanding Premium Statement.

Loan #

\$ **2,726** Premium
\$ **10** Membership Fee
\$ **0**
\$ **2,736** ◀ BALANCE DUE

attached at inception

56-5149 E0022	E4103	E4169	E4201
E4217	E4263	E6036	E6125 S9043

We provide insurance only for those coverages indicated by a specific limit or by an

	COVERAGES	LIMITS OF INSURANCE	DEDUCTIBLE
SECTION I Property and Loss of Income	Building	\$ 0	\$250 applies unless as below
	Business Personal Property	\$ 80,000	<input type="checkbox"/> \$500 <input checked="" type="checkbox"/> \$1000 <input type="checkbox"/> \$
	Loss of Earnings: <input checked="" type="checkbox"/> 25% <input type="checkbox"/> 33 1/3% <input type="checkbox"/> 16 2/3% <input type="checkbox"/> 8%	\$ 24,000	NONE
	Accounts Receivable	\$ 5,000	Above deductible applies unless other option indicated
	Valuable Papers	\$ 5,000	
<input checked="" type="checkbox"/> Building Glass (Blanket)	REPLACEMENT COST	\$ 100	
<input checked="" type="checkbox"/> Outdoor Sign Coverage	\$ 5,000	\$ 100	
<input type="checkbox"/> Earthquake Coverage	Building: 0 Business Personal Property: 0	<input type="checkbox"/> % <input type="checkbox"/> 5% <input type="checkbox"/> 15% of the applicable Ins. Limit.	
SECTION II Liability and Medical	Business Liability	LIMITS OF LIABILITY EACH OCCURRENCE	\$5,000 DEDUCTIBLE APPLIES TO ADVERTISING INJURY ONLY SEE POLICY
	The completed operations and products hazards combined is an aggregate limit of liability for all occurrences during the policy period.	\$ 1,000,000	
	Fire Legal Liability	\$ 150,000	
	Medical Payments to Others \$5,000 ea. person	\$ 25,000	
<input type="checkbox"/> Liquor Liability	\$ 0		
SECTION III Crime	<input type="checkbox"/> Agreement I - Employee Dishonesty	LIMITS OF INSURANCE	DEDUCTIBLE
	Agreement II - Broad Form Money and Securities - Inside	\$ 0	NONE
	Agreement III - Broad Form Money and Securities - Outside	\$ 2,500	\$100
	Agreement IV - Medical Payments	\$ 2,500	
	Agreement V - Depositors Forgery	each \$ 500 person \$ 2,500	NONE

Reverse side for Lender's
able Endorsement

1/19/98

IA

Countersigned

Alan Mendez

Authorized Representative

F-95 141

MEMBER OF FARMERS INSURANCE GROUP OF COMPANIES
HOME OFFICE: 3080 Wilshire Blvd - Los Angeles, California 90010



ABELARDO & CLAUDIA SANTANA AND ARTURO

Named Insured: **SANTANA**
Mailing Address: **DBA: SANTANAS MEXICAN GRILL**
411 BROADWAY
EL CAJON CA, 92021

K353250
Prod. Count
Prematic Acct. No. **99-51-0376** 80216-83-75
Agent Policy Number

22-98
I+A

Insured Location same as mailing address unless otherwise stated

The named insured is an individual unless otherwise stated. Type of Business: Partnership Corp. Other

Policy Period from **12/18/97** to **12/18/98**

at NOON Standard Time (12:01 AM in California, Oregon, Arkansas, Washington, Idaho, and Oklahoma). This policy will continue for successive policy periods as follows: ... successive policy periods shall be in effect until the end of the current policy period or else this policy will terminate.

Mortgage

Loan #

2,726 Premium
10 Membership Fee
0
2,736 BALANCE DUE

Policy Forms and Endorsements attached at inception:
56-5149 E0022 E4105 E4169 E4201
E4217 E4263 E8036 E8125 S9043

SECTION	COVERAGES	LIMITS OF INSURANCE	DEDUCTIBLE
SECTION I PROPERTY	Building	\$ 50,000	\$ 1,000
	Business Personal Property	\$ 50,000	\$ 1,000
	Accounts Receivable	\$ 5,000	NONE
	Valuable Papers	\$ 5,000	Above deductible applies unless other option indicated
	REPLACEMENT COST	\$ 5,000	\$ 100
SECTION II LIABILITY	Business Liability	\$ 1,000,000	\$ 5,000 DEDUCTIBLE APPLIES TO ADVERTISING INJURY ONLY SEE POLICY
	Medical Payments to Others	\$ 25,000	\$ 5,000 ea. person
SECTION III FIDELITY	Agreement I - Employee Dishonesty	\$ 2,500	NONE
	Agreement II - Broad Form Money and Securities - Inside	\$ 2,500	\$ 100
	Agreement III - Broad Form Money and Securities - Outside	\$ 2,500	\$ 100
	Agreement IV - Medical Payments	\$ 500 person	NONE
	Agreement V - Depositors Forgery	\$ 2,500	NONE

Reverse side for Lender's Liable Endorsement **1/18/98**
IA Countersigned

AGENT'S COPY. Authorized Representative

REMOVED BY CREDIT AGENCY AND VERIFIED

Attach to your policy with the same policy number shown on this endorsement.

E
15

Named Insured: ABELARDO & CLAUDIA SANTANA AND ARTURO SANTANA
DBA: SANTANAS MEXICAN GRILL
Mailing Address: 411 BROADWAY
EL CAJON, CA 92021

Agent
99-54-0376

Policy N
60216
of the C
Designat
Deck

Location: 411 BROADWAY EL CAJON, CA 92021
(Same as above unless otherwise stated here)

Effective Date: 12/18/97

Limit of Liability: \$1,000,000 each occ

Additional Insured Endorsement (Special Sentinel)

In consideration of the premium we agree with you to the following:

1. The insurance provided by this policy for bodily injury liability and property damage liability under Co D- Business Liability insurance shall also apply to the additional insured named below, but only with respect to an occurrence arising out of the ownership, maintenance or use of that part of the insured location occupied by you.
2. This insurance does not apply to:
 - (a) Any occurrence which takes place after you cease to occupy the insured location.
 - (b) Any structure alterations, new construction or demolition operations performed by or for any additional insured named below.
3. The additional insured shall not be construed or deemed to be a subscriber to the Company issuing this.
4. The additional insured shall not be or become liable for any premium payments due upon this policy.
5. If this policy is terminated for any reason we shall give 30 days notice in writing to the additional insured below.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

Additional Insured: LEAR INVESTMENTS, A CALIFORNIA GENERAL PARTNERSHIP
455 BROADWAY
EL CAJON, CA 92021

Countersigned *William Moody*
Authorized Representative



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EXHIBIT 15

PLEASE PRINT OR TYPE
FIRMLY. YOU ARE MAKING
MULTIPLE COPIES.

GREGORY J. SMITH
RECORDER/COUNTY CLERK
1600 Pacific Highway, Room 280
P.O. Box 1750
San Diego, California 92112-4147
(619) 237-0502

FILED
#1997-032207
DEC 17 1997
09:43

SEE REVERSE SIDE
FOR INSTRUCTIONS

FILING FEE
\$13.00 - FOR FIRST BUSINESS NAME ON STATEMENT
\$ 2.00 - FOR EACH ADDITIONAL BUSINESS NAME
FILED ON SAME STATEMENT AND DOING
BUSINESS AT THE SAME LOCATION
\$ 2.00 - FOR EACH ADDITIONAL OWNER IN EXCESS
OF ONE OWNER

GREGORY J. SMITH
SAN DIEGO COUNTY RECORDER/CLERK
FEE: \$13.00
EXPIRES: DEC 17 2002
DEPUTY: CORINNION

FICTITIOUS BUSINESS NAME STATEMENT

This Space For Use of County Clerk

THE NAME[S] OF THE BUSINESS[ES]:

(1) Santanas Mexican Grill
(Print Fictitious Business Name[s] on Line Above)

(2) LOCATED AT: 411 Broadway St.
(Street Address of Business - If No Street Address Assigned - Give Exact Location of Business Plus P.O. Box or Rural Route)
IN: El Cajon Ca 92021
(City and Zip)

IS (ARE) HEREBY REGISTERED BY THE FOLLOWING OWNER(S):

(3) #1 Arturo Santana
(Corporate or Owner's Full Name - Type/Print)
2067 Cecelia Terrace, San Diego 92110
(Residence address if not incorporated)
(State of Incorporation if incorporated)
(City and Zip)

#2
(Corporate or Owner's Full Name - Type/Print)

(Residence address if not incorporated)
(State of Incorporation if incorporated)
(City and Zip)

#3
(Corporate or Owner's Full Name - Type/Print)

(Residence address if not incorporated)
(State of Incorporation if incorporated)
(City and Zip)

#4
(Corporate or Owner's Full Name - Type/Print)

(Residence address if not incorporated)
(State of Incorporation if incorporated)
(City and Zip)

(4) This business is conducted by: an individual Individuals - Husband and Wife a General Partnership
 a Limited Partnership a Corporation a Business Trust Co-Partners a Joint Venture
 an Unincorporated Association - other than a Partnership Limited Liability Company
 Other (Specify)

(5) THE TRANSACTION OF BUSINESS BEGAN ON: December 17th 1997 A.S.L

SIGNATURE OF REGISTRANT: Arturo Santana
ARTURO SANTANA
(Print name of person signing and, if a Corporate Officer, also state title)

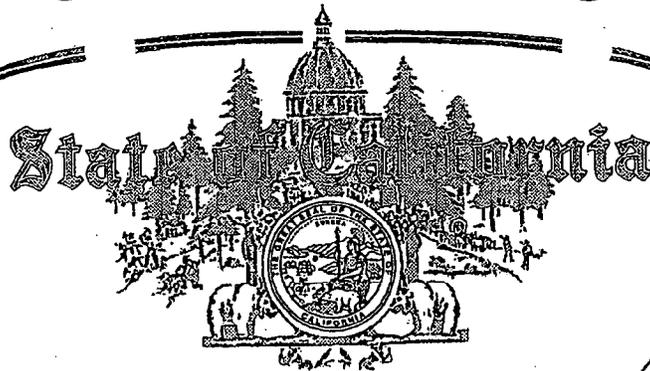
THIS STATEMENT WAS FILED WITH GREGORY J. SMITH, RECORDER/COUNTY CLERK OF SAN DIEGO COUNTY
ON DATE INDICATED BY FILE STAMP ABOVE.

THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THE STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (see section 14400 et seq., Business and Professions Code). THIS FICTITIOUS BUSINESS STATEMENT NAME EXPIRES FIVE (5) YEARS FROM THE DATE IT WAS FILED IN THE OFFICE OF THE RECORDER/COUNTY CLERK, IF YOU INTEND TO CONTINUE BUSINESS UNDER THIS NAME A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED PRIOR TO:

ASSIGNED FILE NO.
RECORDER/COUNTY CLERK

OFFICIAL RECORDS, GREGORY J. SMITH, SAN DIEGO ASSESSOR/RECORDER/COUNTY CLERK 1

EXHIBIT 16



SECRETARY OF STATE

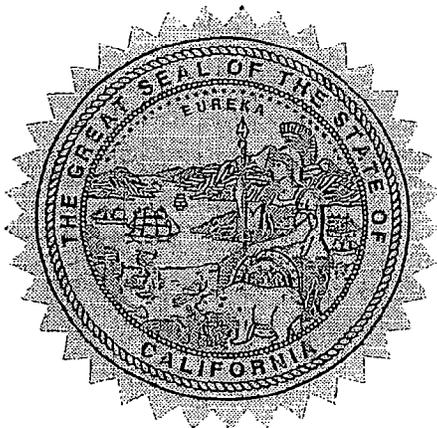


I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this

APR 17 1968



Bill Jones

Secretary of State

EXHIBIT 16 PAGE 1 OF 6

2104624

ENDORSED - FILED
IN THE OFFICE OF THE
SECRETARY OF STATE
OF THE STATE OF CALIFORNIA

APR - 3 1998

ARTICLES OF INCORPORATION

HILL JONES, SECRETARY OF STATE

OF

SANTANAS GRILL INC.

I

The name of this corporation is:

SANTANAS GRILL INC.

II

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

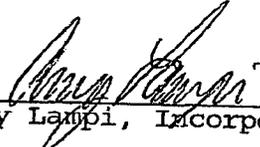
The name in the State of California of this corporation's initial agent for service of process is: Corporation Service Company which will do business in California as CSC-Lawyers Incorporating Service.

IV

This corporation is authorized to issue only one class of stock; and the total number of shares which this corporation is authorized to issue is:

1500 At No Par Value.

Dated: April 3, 1998



Amy Lampi, Incorporator



EXHIBIT 116 PAGE 2 OF 10

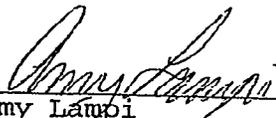
SG00098

ACTION OF SOLE INCORPORATOR

SANTANAS GRILL INC.

The undersigned, without a meeting, being the sole incorporator of the Corporation, does hereby elect the persons listed below to serve as directors of the corporation until the first annual meeting of shareholders and until their successors are elected and qualify:

AVELARDO SANTANA
CLAUDIA VALLARTA SANTANA



Amy Lampi
Incorporator

Dated: April 3, 1998



State of California

Bill Jones
Secretary of State

FD-302 (REV. 11-27-70)
Business Corporation
Form No. 1001 (1-7-71)

STATEMENT BY DOMESTIC STOCK CORPORATION

A \$10 FILING FEE MUST ACCOMPANY THIS STATEMENT.

IMPORTANT - Please Read Instructions On Back of Form

Santitas Grill, Inc.

2104624

Form 1001-0001474

If there has been no change in any of the information on this statement since the last filing, please indicate on return envelope if no change is desired to be made.

DO NOT MARK IN THIS SPACE

THE CALIFORNIA CORPORATION NAMED HEREIN, MAKES THE FOLLOWING STATEMENT

I, the undersigned, being duly sworn, depose and say that the information furnished herein is true and correct to the best of my knowledge and belief.

NAME	ADDRESS	CITY	STATE	ZIP
2067 Cecilia Terrace	San Diego, CA	92110		
Same				
Same				

THE NAMES OF THE FOLLOWING OFFICERS AND DIRECTORS

NAME	ADDRESS	CITY	STATE	ZIP
Abelardo Santana-Lee	2067 Cecilia Terrace	San Diego, CA	92110	
Claudia Vallarta-Santana	2067 Cecilia Terrace	San Diego, CA	92110	
Claudia Vallarta-Santana	2067 Cecilia Terrace	San Diego, CA	92110	

DIRECTORS, INCLUDING DIRECTORS WHO ARE ALSO OFFICERS

NAME	ADDRESS	CITY	STATE	ZIP
Abelardo Santana-Lee	2067 Cecilia Terrace	San Diego, CA	92110	
Claudia Vallarta-Santana	2067 Cecilia Terrace	San Diego, CA	92110	

DESIGNATED AGENT FOR SERVICE OF PROCESS

Claudia Vallarta-Santana
2067 Cecilia Terrace, San Diego, CA 92110

PLEASE TYPE TYPE OF BUSINESS OF THE CORPORATION NAMED IN ITEM 1.

Operation of three restaurants
Claudia Vallarta-Santana

1987 S Corporation Election or Termination/Revocation

3500

OMB No. 1545-0047 and OMB No. 1545-0048

Part I

1. EIN: 2104634
2. EIN: 33-0201479

3. Name: **Santana Grill, Inc.**

4. Address: **2007 Cecilia Terrace**

5. City: **San Diego, California 92110**

6. Date of application: 1. Request of a new federal tax classification
 2. Request to elect S corporation status
 3. Termination of S corporation status
 4. Request of federal tax classification
 5. Request of federal tax classification
 6. Request of federal tax classification

Part II

1. Election period: **December 31st**

2. Fiscal year: **5800**

3. State: **California**

4. Date of election: **November 13, 1986**

5. Date of termination: **April 7, 1988**

6. Date of revocation: **April 7, 1988**

7. Is the corporation a member of any kind of partnership? Yes No

8. If "Yes," state name of partnership, date of formation, and S corporation status for filing in: **Santana Mexican Food**

9. "Member" and "Partner" defined in Reg. 1.1361-1(c)(1) through (4)(C)

10. Indicate income split ratios where will be used as income split ratios and any in: **December 31st**

The limited income split ratio is a personal income split ratio.

11. Name of each shareholder, partner, or sole proprietor, properly identified in the corporation's stock and each listed in articles, and board, and listed by the shareholder, partner, or sole proprietor in identifying the content of ownership, except as to the number of shares held in common.	12. Shareholder's consent (Required for the second year classification) listed in the corporation's stock and board, and listed by the shareholder, partner, or sole proprietor in identifying the content of ownership, except as to the number of shares held in common.	13. Shareholder		14. Birth, marital status, or legal domicile for identification purposes.	15. Shareholder's taxable year and month-end year.
		16. Number of shares	17. Date acquired		
Abelardo Santana-Lob	<input checked="" type="checkbox"/>	50	4/7/88	557-01-2501	12/31
Claudia Valente-Santana	<input checked="" type="checkbox"/>	50	4/7/88	615-01-6687	12/31

18. If the corporation is a member of a partnership, all limited partners must file to the extent the partner's interest in the partnership is properly identified in the corporation's stock, and each listed in articles, and board, and listed by the shareholder, partner, or sole proprietor in identifying the content of ownership, except as to the number of shares held in common.

Part III

Under penalty of perjury, I declare that I have examined this form, including accompanying information and attachments, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature: _____

Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: (918) 278-2628

EXHIBIT 17

PLEASE PRINT OR TYPE
FIRMLY. YOU ARE MAKING
MULTIPLE COPIES.

GREGORY J. SMITH
RECORDER/COUNTY CLERK
1600 Pacific Highway, Room 260
P.O. Box 1750
San Diego, California 92112-4147
(619) 237-0502

FILED
This Space For Use of County Clerk
#1998-007716

MAR 20 1998
14:12

GREGORY J. SMITH
SAN DIEGO COUNTY RECORDER/CLERK
FEES: 13.00
EXPIRES: MAR 20 2003
DEPUTY: INVALDIRE

SEE REVERSE SIDE
FOR INSTRUCTIONS

FILING FEE
\$13.00 - FOR FIRST BUSINESS NAME ON STATEMENT
\$ 2.00 - FOR EACH ADDITIONAL BUSINESS NAME
FILED ON SAME STATEMENT AND DOING
BUSINESS AT THE SAME LOCATION
\$ 2.00 - FOR EACH ADDITIONAL OWNER IN EXCESS
OF ONE OWNER

FICTITIOUS BUSINESS NAME STATEMENT

THE NAME[S] OF THE BUSINESS[ES]:

(1) SANTANAS MEXICAN GRILL
(Print Fictitious Business Name[s] on Line Above)

(2) LOCATED AT: 3742 MIDWAY DRIVE
(Street Address of Business - If No Street Address Assigned - Give Exact Location of Business Plus P.O. Box or Rural Route)
IN: SAN DIEGO, CA 92110
(City and Zip)

IS (ARE) HEREBY REGISTERED BY THE FOLLOWING OWNER(S):

(3) #1 CLAUDIA V. SANTANA
(Corporate or Owner's Full Name - Type/Print)

2067 CECELIA TERRACE
(Residence address if not incorporated)
(State of incorporation if incorporated)
SAN DIEGO, CA 92110
(City and Zip)

#2 ABELARDO SANTANA
(Corporate or Owner's Full Name - Type/Print)

2067 CECELIA TERRACE
(Residence address if not incorporated)
(State of incorporation if incorporated)
SAN DIEGO, CA 92110
(City and Zip)

#3
(Corporate or Owner's Full Name - Type/Print)

(Residence address if not incorporated)
(State of incorporation if incorporated)

(City and Zip)

#4
(Corporate or Owner's Full Name - Type/Print)

(Residence address if not incorporated)
(State of incorporation if incorporated)

(City and Zip)

(4) This business is conducted by: an Individual Individuals - Husband and Wife a General Partnership
 a Limited Partnership a Corporation a Business Trust Co-Partners a Joint Venture
 an Unincorporated Association - other than a Partnership Limited Liability Company
 Other (Specify)

(5) THE TRANSACTION OF BUSINESS BEGAN ON: N/A

SIGNATURE OF REGISTRANT: *C. V. Santana*
CLAUDIA V. SANTANA
(Print name of person signing and, if a Corporate Officer, also state title)

THIS STATEMENT WAS FILED WITH GREGORY J. SMITH, RECORDER/COUNTY CLERK OF SAN DIEGO COUNTY
ON DATE INDICATED BY FILE STAMP ABOVE.

THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THE STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF
THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (see section 14400 et seq., Business and Professions Code). THIS FICTITIOUS
BUSINESS STATEMENT NAME EXPIRES FIVE (5) YEARS FROM THE DATE IT WAS FILED IN THE OFFICE OF THE RECORDER/COUNTY CLERK, IF
YOU INTEND TO CONTINUE BUSINESS UNDER THIS NAME A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED PRIOR TO:

G. Smith

ASSIGNED FILE NO.

EXHIBIT 17 PAGE 1 OF 4

SG00013

CERTIFICATE OF PUBLICATION

Claudia V. Santana
Santanas Mexican Grill
2067 Cecelia Terrace
San Diego, CA 92110

F I L E D
GREGORY J. SMITH
RECORDER/COUNTY CLERK

MAY 08 1998

BY: _____
DEPUTY

IN THE MATTER OF

Santanas Mexican Grill

NO.

1998-007716

**FICTITIOUS BUSINESS
NAME STATEMENT**

File No. 1998-007716
THE NAME OF THE BUSINESS:
Santanas Mexican Grill
LOCATED AT: 3742 Midway Drive
IN: San Diego, CA 92110
IS (ARE) HEREBY REGISTERED BY
THE FOLLOWING OWNER(S):
Claudia V. Santana
2067 Cecelia Terrace
San Diego, CA 92110
Abelardo Santana-Lee
2067 Cecelia Terrace
San Diego, CA 92110
This business is conducted by:
Individuals-Husband and Wife
THE TRANSACTION OF BUSINESS
BEGAN ON: N/A
Claudia V. Santana
THIS STATEMENT WAS FILED WITH
RECORDER/COUNTY CLERK OF SAN
DIEGO COUNTY ON MAR 20 1998
Pub. April 17, 24 May 1, 8-d511103

I, Sylvia Serrano, am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years, and not party to or interested in the above entitled matter. I am the principal clerk of the San Diego Daily Transcript, a newspaper of general circulation, printed and published daily, except Saturdays and Sundays, in the City of San Diego, County of San Diego and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1909, Decree No. 14894; and the

FICTITIOUS BUSINESS NAME

is a true and correct copy of which the annexed is a printed copy and was published in said newspaper on the following date(s), to wit:

APRIL 17, 24, MAY 1, 8

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 8 day of

May 1998

Sylvia Serrano
(Signature)

PLEASE PRINT OR TYPE
FIRMLY. YOU ARE MAKING
MULTIPLE COPIES.

GREGORY J. SMITH
RECORDER/COUNTY CLERK
1600 Pacific Highway, Room 260
P.O. Box 1750
San Diego, California 92112-4147
(619) 237-0502

This Space For Use of County Clerk

#1998-010002

APR 14 1998
13:24

GREGORY J. SMITH
SAN DIEGO COUNTY RECORDER/CLERK
FEES: 13.00
EXPIRES: APR 14 2003
DEPUTY: KPETERSON

SEE REVERSE SIDE
FOR INSTRUCTIONS

FILING FEE
\$13.00 - FOR FIRST BUSINESS NAME ON STATEMENT
\$ 2.00 - FOR EACH ADDITIONAL BUSINESS NAME
FILED ON SAME STATEMENT AND DOING
BUSINESS AT THE SAME LOCATION
\$ 2.00 - FOR EACH ADDITIONAL OWNER IN EXCESS
OF ONE OWNER

FICTITIOUS BUSINESS NAME STATEMENT

THE NAME[S] OF THE BUSINESS[ES]:

(1) SANTANAS MEXICAN GRILL
(Print Fictitious Business Name[s] on Line Above)

(2) LOCATED AT: 3742 MIDWAY DRIVE
(Street Address of Business - If No Street Address Assigned - Give Exact Location of Business Plus P.O. Box or Rural Route)
IN: SAN DIEGO, CA 92110
(City and Zip)

IS (ARE) HEREBY REGISTERED BY THE FOLLOWING OWNER(S):

(3) #1 SANTANAS GRILL, INC.
(Corporate or Owner's Full Name - Type/Print)

CALIFORNIA
(Residence address if not incorporated)
(State of incorporation if incorporated)

(City and Zip)

#3

(Corporate or Owner's Full Name - Type/Print)

(Residence address if not incorporated)
(State of incorporation if incorporated)

(City and Zip)

#2

(Corporate or Owner's Full Name - Type/Print)

(Residence address if not incorporated)
(State of incorporation if incorporated)

(City and Zip)

#4

(Corporate or Owner's Full Name - Type/Print)

(Residence address if not incorporated)
(State of incorporation if incorporated)

(City and Zip)

(4) This business is conducted by: an Individual Individuals - Husband and Wife a General Partnership
 a Limited Partnership a Corporation a Business Trust Co-Partners a Joint Venture
 an Unincorporated Association - other than a Partnership Limited Liability Company
 Other (Specify)

(5) THE TRANSACTION OF BUSINESS BEGAN ON: N/A

SIGNATURE OF REGISTRANT: [Signature]

CLAUDIA V. SANTANA Vice President
(Print name of person signing and, if a Corporate Officer, also state title)

THIS STATEMENT WAS FILED WITH GREGORY J. SMITH, RECORDER/COUNTY CLERK OF SAN DIEGO COUNTY
ON DATE INDICATED BY FILE STAMP ABOVE. Secretary

THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THE STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (see section 14400 et seq., Business and Professions Code). THIS FICTITIOUS BUSINESS STATEMENT NAME EXPIRES FIVE (5) YEARS FROM THE DATE IT WAS FILED IN THE OFFICE OF THE RECORDER/COUNTY CLERK, IF YOU INTEND TO CONTINUE BUSINESS UNDER THIS NAME A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED PRIOR TO:

[Signature]

ASSIGNED FILE NO.

EXHIBIT 17 PAGE 3 OF 4

SG00015

File No: 98 10002

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
CERTIFICATE OF PUBLICATION

SANTANAS MEXICAN GRILL
Claudia V. Santana, Vice President/
3742 Midway Drive
San Diego, CA 92110-

FILED
GREGORY J. SMITH
RECORDING CLERK

MAY 28 1998

BY: _____
DEPUTY

Affidavit of Publication
Heartland News Legal Transcript
10010 Campo Rd. (P.O. Box 188)
Spring Valley, CA 91977
(619) 670-6194

I, Regina L. Stone hereby certify that The Heartland News is a weekly newspaper of general circulation within the provisions of the Government Code of the State of California, printed and published in the County of San Diego, State of California, and the

FICTITIOUS BUSINESS
NAME STATEMENT
File No. 98 10002

The name of the business: SANTANAS MEXICAN GRILL, located at: 3742 Midway Drive, San Diego, CA 92110-, , Is (are) hereby registered by the following owner(s): Santanas Grill, Inc. California This business conducted by: a Corporation. The registrant commenced the transaction of business on n/a. s/s: Claudia V. Santana, Vice President/ Secretary ; This statement was filed with Gregory J. Smith, County Clerk of San Diego County on Apr 14, 1998. May 7, 14, 21, 28, 1998.

FICTITIOUS BUSINESS NAME STATEMENT

to which this certificate is annexed is a true and correct copy published in said newspaper on

May 7, 14, 21, 28, 1998

I certify under penalty of perjury that the foregoing is true and correct, at Spring Valley, California, on

May 28, 1998


Signature

File No: 98 10002

EXHIBIT 17 PAGE 4 OF 4

SG00016

EXHIBIT 18

COMBINATION PLATES

(INCLUDES RICE AND BEANS)

- 1.- CARNE ASADA OR CARNITAS (INCLUDES 3 CORN OR 2 FLOUR TORTILLAS).....5.50
- 2.- TWO CARNE ASADA TACOS.....5.50
- 3.- TWO CHILES RELLENOS.....5.00
- 4.- TOSTADA & BEEF TACO.....4.80
- 5.- TWO BEEF TACOS.....4.80
- 6.- TWO CHICKEN TACOS.....4.80
- 7.- TWO FISH TACOS.....4.80
- 8.- TOSTADA & ENCHILADA.....4.80
- 9.- BEEF TACO & ENCHILADA.....4.80
- 10.- CHILE RELLENO & ENCHILADA.....4.80
- 11.- TWO CHEESE ENCHILADAS.....4.70
- 12.- CHOOSE ANY ITEM FROM OUR REGULAR MENU AND FOR ONLY 1.50 EXTRA WILL GIVE YOU A PLATE WITH RICE AND BEANS.

QUESADILLAS

- 1.- TEGATE CHICKEN OR CARNE ASADA WITH JACK CHEESE, SOUR CREAM & GUACAMOLE.....4.20
- 2.- QUESO MUSH CHICKEN OR CARNE ASADA WITH JACK CHEESE, MUSHROOMS.....4.20
- 3.- CALIFORNIA JACK OR CHEDDAR.....2.20

CHIPS

- 1.- PLAIN.....1.00
- 2.- WHIT CHEESE OR SALSA.....1.50
- 3.- W H I T C H E E S E & GUACAMOLE.....3.25
- 4.- CHIPS OR FRIES WITH CHEESE, GUACAMOLE, SOUR CREAM, MEXICAN SALSA, CARNE ASADA OR CHICKEN.....4.50

TOSTADAS

- (WITH BEANS, SOUR CREAM, CHEESE AND LETTUCE)
- 1.- BEEF, BEANS, CHICKEN, CARNITAS.....2.10
- 2.- FLYING SAUCER CHICKEN OR BEEF.....3.50

asa de oro
464.04.62



... Es Muy Bueno
HOME OF CALIFORNIA BURRITO

3742 MIDWAY DR.
SAN DIEGO CA
(619) 523-9517

4111 BROADWAY ST.
EL CAJON, CA
(619) 444-4628

1480 ROSECRANS ST.
SAN DIEGO, CA
(619) 226-2033

1525 MORENA BLVD.
SAN DIEGO, CA
(619) 276-6010

BURRITOS

- 1.- CALIFORNIA BURRITO WITH POTATOES, SALSA, CHEDDAR, CARNE ASADA OR CHICKEN.....3.00
- 2.- CARNE ASADA, CARNITAS, GRILLED CHICKEN WITH SALSA & GUACAMOLE.....3.00
- 3.- FISH CABBAGE, SALSA & WHITE SAUCE.....3.00
- 4.- 1 LB. GREEN PORK WITH RICE AND BEANS INSIDE.....3.00
- 5.- BEANS.....2.50
- 6.- ACHIOTE CHICKEN.....2.50
- 7.- SHRIMP WITH RICE, BEANS & SOUR CREAM INSIDE.....3.75
- 8.- CHIMICHANGA CHICKEN OR BEEF.....3.75

TACOS

- 1.- CARNE ASADA TACO.....2.10
- 2.- CARNITAS.....2.00
- 3.- BEEF, FISH, CHICKEN.....1.80
- 4.- 4 BEEF ROLLED TACOS WITH GUACAMOLE.....2.20
- 5.- 4 BEEF ROLLED TACOS WITH CHEESE.....1.60
- 6.- 3 CHICKEN FLAUTAS WITH GUACAMOLE.....2.25
- 7.- 3 CHICKEN FLAUTAS WITH CHEESE.....1.75

ENCHILADAS

- (WITH CHEDDAR AND LETTUCE)
- 1.- CHICKEN, CHEESE, BEEF.....3.25

SIDES

- 1.- 1/2 PT. BEANS OR RICE.....1.20
- 2.- 1/2 PT. SALSA OR SOUR CREAM.....1.50
- 3.- 1/2 PT. GUACAMOLE.....1.75
- 4.- 2 CORN OR 1 FLOUR TORILLAS.....0.40
- CARROTS.....0.40

REFRESHMENTS

- 1.- FRESH LEMONADE, HORCHATA, JAMAICA TAMARINDO, NESTEA, MILK, ORANGE JUICE.....1.00
- 2.- COKE, DIET COKE, SPRITE, DR. PEPPER, ROOT BEER, ORANGE.....0.90
- 3.- BOTTLED WATER.....0.75

EXTRAS

- (ONLY INSIDE TOUR ORDER)
- 1.- RICE, BEANS, SOUR CREAM, CHEESE, MEXICAN SALSA, LETTUCE.....0.40
- 2.- GUACAMOLE.....0.60
- 3.- CHICKEN, CARNE ASADA, CARNITAS, FISH.....1.25

TORTAS

- (WITH GUACAMOLE AND LETTUCE)
- 1.- CARNE ASADA, HAM & CHEESE, CHICKEN, BEEF, CARNITAS.....2.75

DAILY SPECIAL

- 1.- ENCHILADAS COMBINATION PLATE, ONE CHICKEN, ONE CHEESE, WITH RICE BEANS AND CHIPS.....3.75
- 2.- CARNE ASADA TOSTADA, WITH BEANS, SOUR CREAM, CHEESE, LETTUCE, MEXICAN SALSA & A SODA.....2.75
- 3.- CHICKEN BURRITO FILLED WITH RICE, BEANS AND SOUR CREAM.....3.20
- 4.- BUY TWO FISH TACOS GET THE 3RD ONE FREE.....3.60
- 5.- 4 BEEF ROLLED TACOS OR CHICKEN FLAUTAS PLATE WITH RICE BEANS AND CHIPS AND YOUR CHOICE OF ANY 3 ITEMS: CHEESE, LETTUCE, SOUR CREAM, MEXICAN SALSA & GUACAMOLE.....3.80
- 6.- 1 LB. VEGGIE BURRITO WITH YOUR CHOICE OF ANY 4 ITEMS BEANS, RICE, CHEESE, LETTUCE, CABBAGE, MEXICAN SALSA, POTATOES, SOUR CREAM.....2.75

BREAKFAST

- (INCLUDES RICE AND BEANS)
- 1.- MACHACA O CHORIZO PLATE.....3.75
- 2.- HUEVOS RANCHEROS.....3.00
- 3.- EGGS SALSA & CHEESE.....3.00
- 4.- SCRAMBLED EGGS WITH HAM OR BACON.....3.00

BURRITOS

- 1.- MACHACA OR CHORIZO.....2.75
- 2.- BUENOS DIAS BURRITO WITH 2 EGGS, POTATOES, BACON, SALSA & CHEESE.....2.75
- 3.- RANCHO BURRITO WITH 2 EGGS, CHORIZO, POTATOES & SALSA.....2.75

TORTAS

- (WITH LETTUCE AND GUACAMOLE)
- 1.- MACHACA TORTA.....2.60
- 2.- CHORIZO TORTA.....2.60
- 3.- EGGS SALSA & CHEESE.....2.60

EXHIBIT 19

AWORLD**PAGES.COM**
 Home Search ▾ Update Your Listing ▾ We're Hiring About Us ▾ Advertise With Us

Santana's Mexican Grill

SANTANA'S MEXICAN GRILL

...Es Muy Bueno!

Tacos • Enchiladas • Burritos
 Chile Rellanos • Chimichangas
 Flautas • Vegetarian Dishes • Tortas
 Tostados • Quesadillas • Nachos
 Menudo Served Fri • Sat • Sun

YUCCA VALLEY 29 PALMS

228-3044 | **361-0202**
 56547 29 Palms Hwy | 73680 Sun Valley
 (ALTADEA)

Breakfast • Lunch • Dinner
 Open 24 Hours • Drive-Thru

Santana's Mexican Grill

- 56547 29 Palms Hwy Yucca Valley 228-3044
- 73680 Sun Valey 29 Palms 361-0202

PL00401

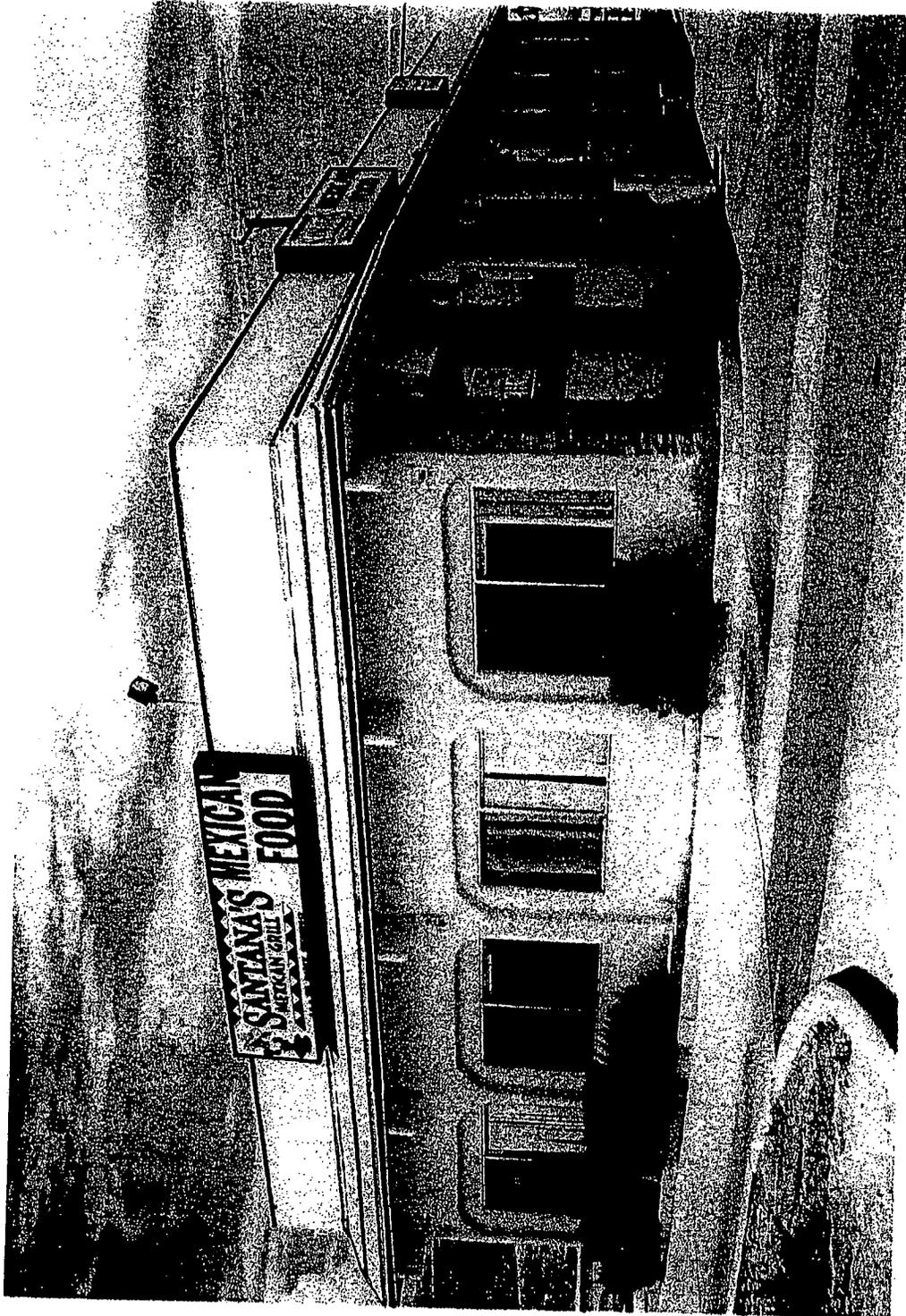


EXHIBIT 20



Food Protection Public Business	Housing and Property Improvement Public Business	Plan Check Public Business	Recreational Health Public Business	Waste Management Public Business	Water/Wastewater Land Use Public Business	Vector Control Public Business
---	--	--	---	--	---	--

**Department of Public Health
Division of Environmental Health**

Restaurant Ratings

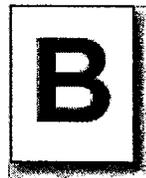
Inspected retail food establishments receive a score or a letter grade according to their inspection report.

For a detailed explanation of the Food Facility Rating system, go to the [Retail Food Inspection Guide](#). All data is updated daily.

To the County home page
Restaurant Rating Search Help ?

Facility Name: Santana's Mexican Food
 56547 29 Palms Hwy
 Yucca Valley , CA 92284
[Click here to view a map](#)

Equivalent Grade



Inspection Date: 1/3/2005
 Permit Type: Public Eating Place (25-59Seats)
 Score: 80

Violations	Points Deducted
Food protected from contamination, adulteration, spo	5
Proper manual sanitizer/Sanitizing equipment & ute	4
Probe and refrigerator thermometers-Minor	1
Floors/walls/ceilings-vermin exclusion-Major	3

- Handwashing sink/supplies-Major 3
- Proper sanitizing of food contact surfaces-Minor 3
- Equipment/Utensils/x3b storage,cleanliness-Minor 1

Inspection History				
Date	Time	Permit Type	Score	Equivalent Grade
<u>1/3/2005</u>	11:06 AM	Public Eating Place (25-59Seats)	80	B
<u>11/16/2004</u>	11:40 AM	Public Eating Place (25-59Seats)	84	B

Scoring Legend:

- A - Score of 90 to 100
- B - Score of 80 to 89
- C - Score of 70 to 79
- Score of 69 and Below (Not Letter Graded)*

*See Food Facility Closures

New Search

More advanced search features

Complete county-wide city/community listing



◀ [To the home page](#)

[To the top](#)

Direct questions or comments about this site to [webmaster](#)

EXHIBIT 21



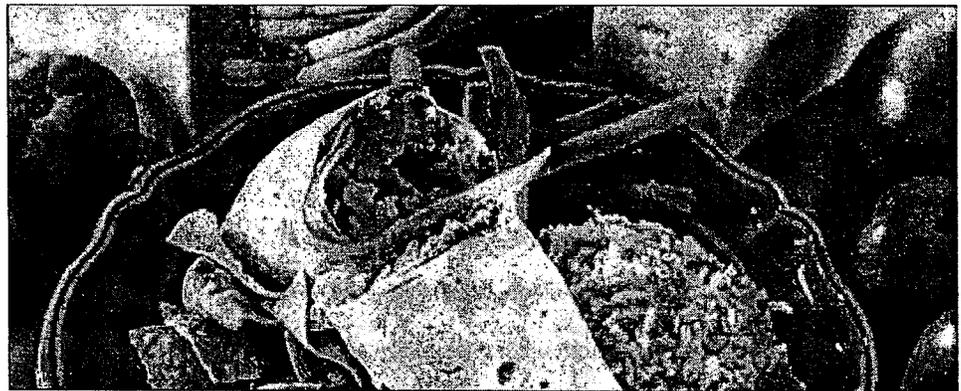
**CLICK HERE TO
STAY INFORMED**

SPECIAL OFFER

**NOW OPEN
PACIFIC BEACH:
2303 Garnet Ave**

Click here for our other
locations

Click here to visit
restaurantpage.com

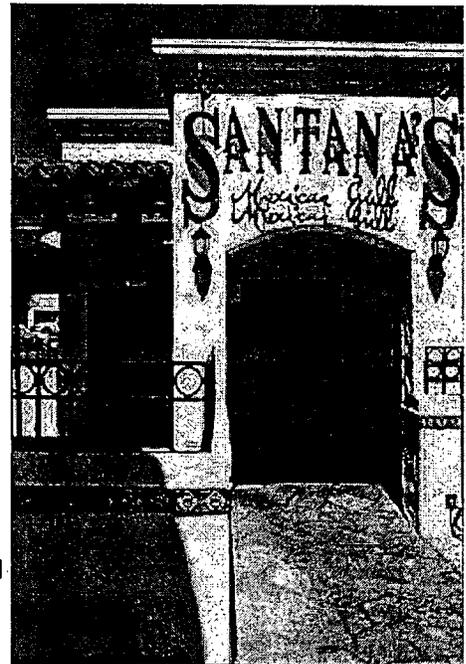


Thanks to you, we have been serving you in San Diego since 1987. We now have six locations to serve you. It is because of you that our business continues to grow.

We believe that fresher is better. That is why our food is prepared every day on our premises, and our tortillas, meat, poultry, and produce are delivered daily. We use 100% corn oil, and no preservatives.

We thank you again for the opportunity of letting us serve you. And to you who haven't tried our food, we dare you to do so!

We also offer frequent eater cards and a fresh salsa bar when you dine in at all our locations.



VISIT WWW.SDLATINOFILM.COM



EXHIBIT 21 PAGE 1 OF 16



CLICK HERE TO STAY INFORMED

SPECIAL OFFER

MEN

- [Tacos](#) • [Tostadas](#) • [Tortas](#) • [Burritos](#) •
- [Quesadillas](#) • [Chips](#) • [Sides](#) • [Extras](#) •
- [Breakfast](#) • [Drinks](#) • [Dessert](#) •

NOW OPEN
PACIFIC BEACH:
 2303 Garnet Ave

[Click here for our other locations](#)

[Click here to visit restaurantpage.com](http://restaurantpage.com)



TACOS

Carne Asada, Grilled Chicken, Carnitas \$2.00
 With guacamole and Mexican salsa

Shredded Beef or Achiote Chicken \$2.00
 With lettuce, cheddar, and enchilado cheeses

Fish \$2.00
 Crispy battered fish, shredded cabbage, Mexican salsa, and our creamy tomatillo sauce

(4) Beef Rolled Tacos with Cheese \$1.80
 With guacamole and cheese \$2.50

(3) Chicken Flautas with Cheese \$2.00
 With guacamole and cheese \$2.50

TOSTADAS

Beans or Chicken \$2.75
 With beans, sour cream, cheddar cheese, cotija cheese and lettuce

TORTAS

Carne Asada, Achiote, Grilled Chicken or Ham and Cheese \$4.00
 With lettuce and guacamole.

BURRITOS

One-pound California Burrito \$4.25
Grilled carne asada, achiote or grilled chicken,
with potatoes, salsa mexicana and cheddar cheese

Carne Asada, Grilled Chicken or Carnitas \$4.25
With salsa mexicana and guacamole

Achiote Chicken \$4.25
Grilled achiote chicken with rice and beans

One-pound Veggie Burrito \$4.00
With your choice of any four items:
Beans, rice, lettuce, potatoes, guacamole, Mexican salsa, cheese, sour
cream or grilled mushrooms

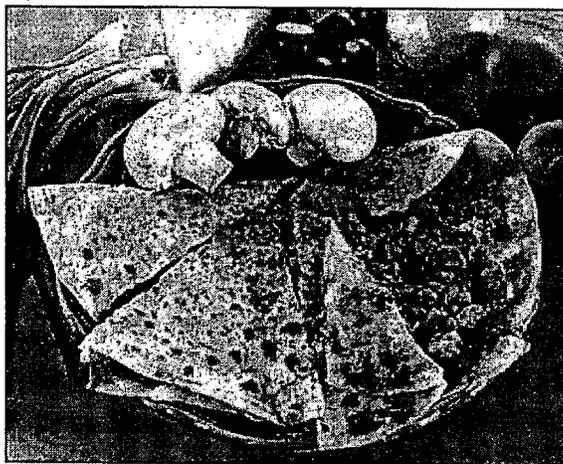
Bean and Cheese \$2.75

Chicken Chimichanga \$5.50
Grilled chicken and beans topped with lettuce, Mexican salsa, cheddar and
cotija cheese, and side orders of guacamole and sour cream

Shrimp Burrito \$5.00
Grilled shrimp, Mexican salsa and achiote sauce with rice and a zest of
lemon

Fish Burrito \$4.25
Crispy battered fish, shredded cabbage, mexican salsa, and our creamy
tomatillo sauce

**Want something lighter with the same great flavor? Now you can
make any of your favorite burritos into a bowl!
Perfect for low carb dieters!**



QUESADILLAS

Tecate \$5.50
Achiote or grilled chicken or carne asada and jack cheese,
with sides of sour cream, guacamole, Mexican salsa and chips

Quesomush \$5.50

Achiote or grilled chicken or carne asada, jack cheese, and mushrooms,
with sides of Mexican salsa and chips

Vallarta \$5.50

Grilled chicken or carne asada and jack cheese,
with sides of beans, sour cream, Mexican salsa and chips

Jack or Cheddar \$2.75



CHIPS

Plain

Half Order \$.75 / Full Order \$1.50

Cheese and Guacamole

Half Order \$2.00 / Full Order \$3.75

Carne Asada, Achiote or Grilled Chicken Chips Or Fries

Half Order \$4.00 / Full Order \$6.00

With cotija and cheddar cheese, beans, guacamole, sour cream, and
Mexican salsa

SIDES

Beans, rice, sour cream, Mexican salsa 8oz. \$1.50

Guacamole, cheese, carne asada, achiote or grilled chicken 8oz. \$3.00

EXTRAS

Only inside your order

Rice, beans, sour cream, cheese, Mexican salsa, lettuce. \$.50

Guacamole or grilled mushrooms \$.70

BREAKFAST

(5:00am-10:30am)

**Chorizo (Mexican Sausage)
or Machaca (Shredded Beef and Vegetables)**

Burrito or Torta \$3.50

with 2 eggs

EXHIBIT 21 PAGE 4 OF 16

Buenos Dias Burrito \$3.50

Two eggs, potatoes, bacon, Mexican salsa, and cheese.

Pancho Burrito \$3.50

Two eggs, ham, potatoes and cheese.

DRINKS

24oz. \$1.30 / 32oz. \$1.90

Fresh Lemonade, Horchata, Jamaica, Tamarindo, Guava, Piña, Coca Cola,
Diet Coke, Sprite, Minute Maid, Nestea.

Bottled Water \$1.30

8 oz milk \$1.00

10 oz Orange Juice \$1.00

DESSERT

Vanilla Flan (Custard) \$1.75

All of our prices include tax.



SignOnSanDiego.com
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COMBINATION PLATE



COMBINATION PLATES
Served with rice, beans and chips.

Please Order by the Number.

- Plate #1 - \$5.50**
 Carne Asada
 Grilled Chicken
 Achiotte Chicken
 Carnitas
 Shrimp

Served with sides of guacamole, Mexican salsa, lettuce and three corn or two flour tortillas

- Plate #2 - \$5.50**
 2. Order of Two Tacos
 Carne Asada
 Beef
 Achiotte Chicken
 Grilled Chicken
 Carnitas

EXHIBIT 21 PAGE 6 OF 16

Fish

Plate #3 - \$4.25

3. Four Beef Rolled Tacos or
Three Chicken Flautas

With lettuce, Mexican salsa, sour cream and cheddar cheese

Plate #4 - \$4.50

4. Order of One Burrito
Carne Asada
Grilled Chicken
Achiote Chicken
California Carne
California Achiote Chicken
California Grilled Chicken
Fish

Plate #5 \$5.50

5. Cheese or Chicken Enchiladas (2)
with sour cream and cheese

Green - mild tomatillo sauce

Red - chile pasilla sauce

All of our prices include tax.



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You will **NOT** receive a receipt with this purchase.

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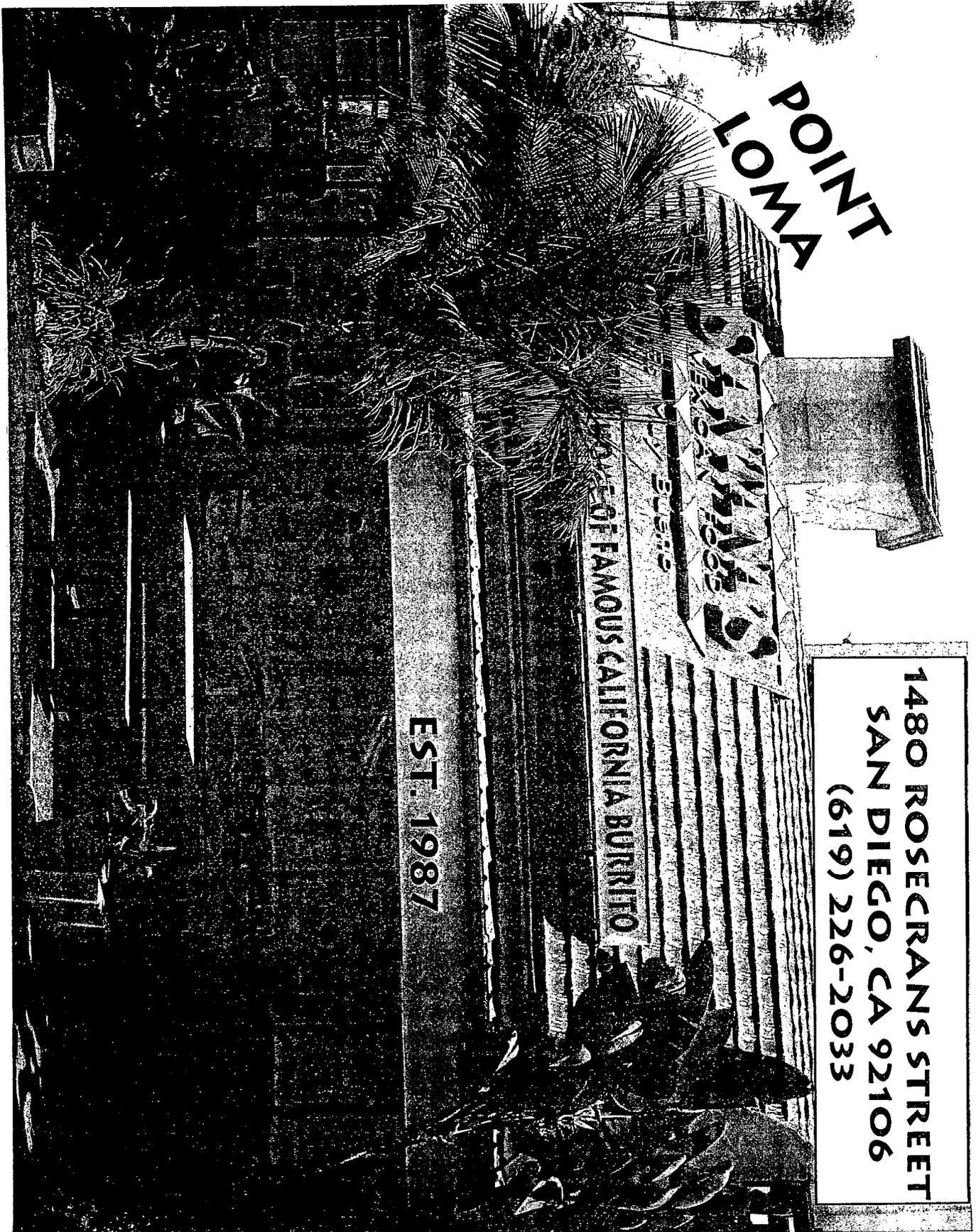
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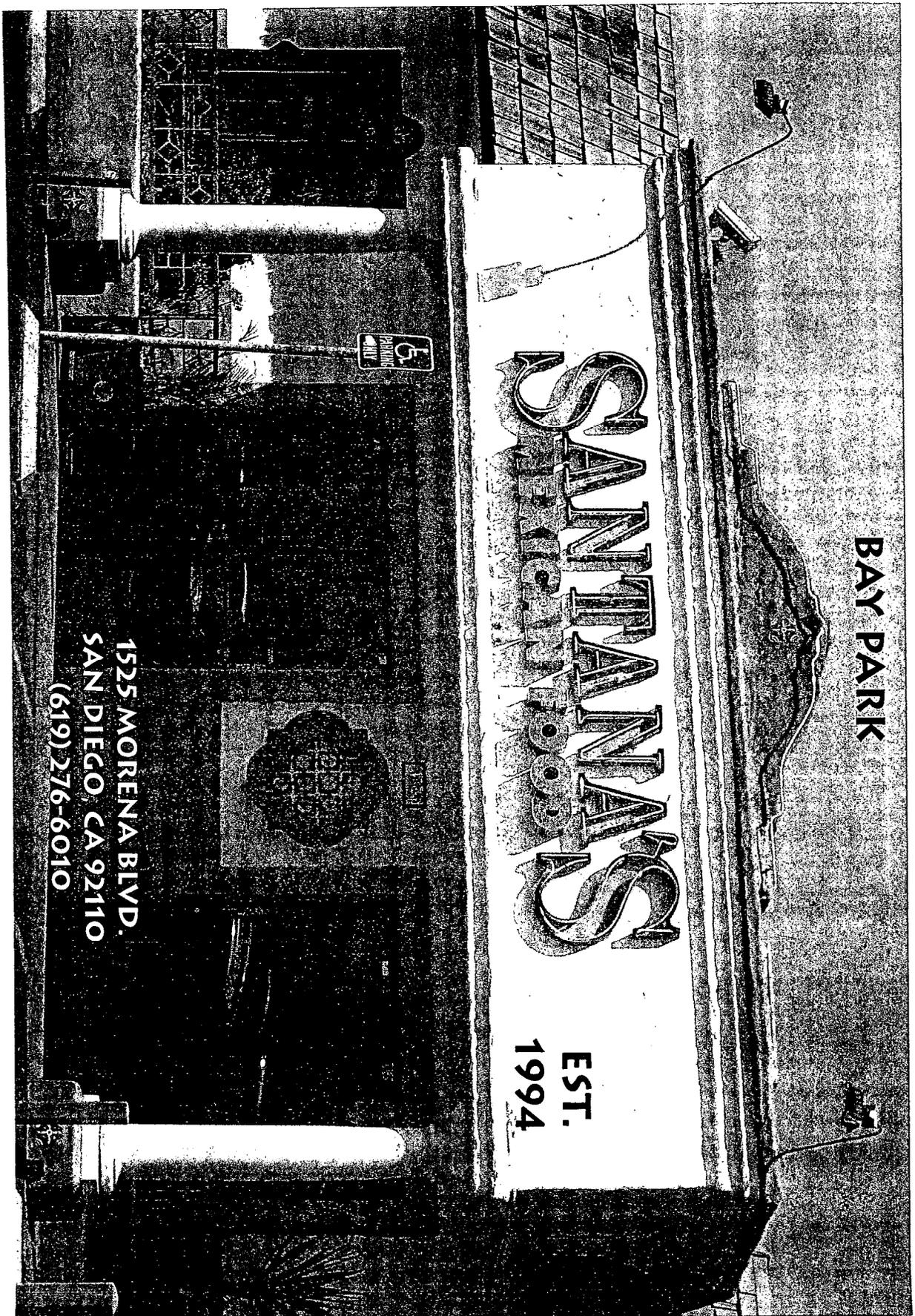
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BAY PARK

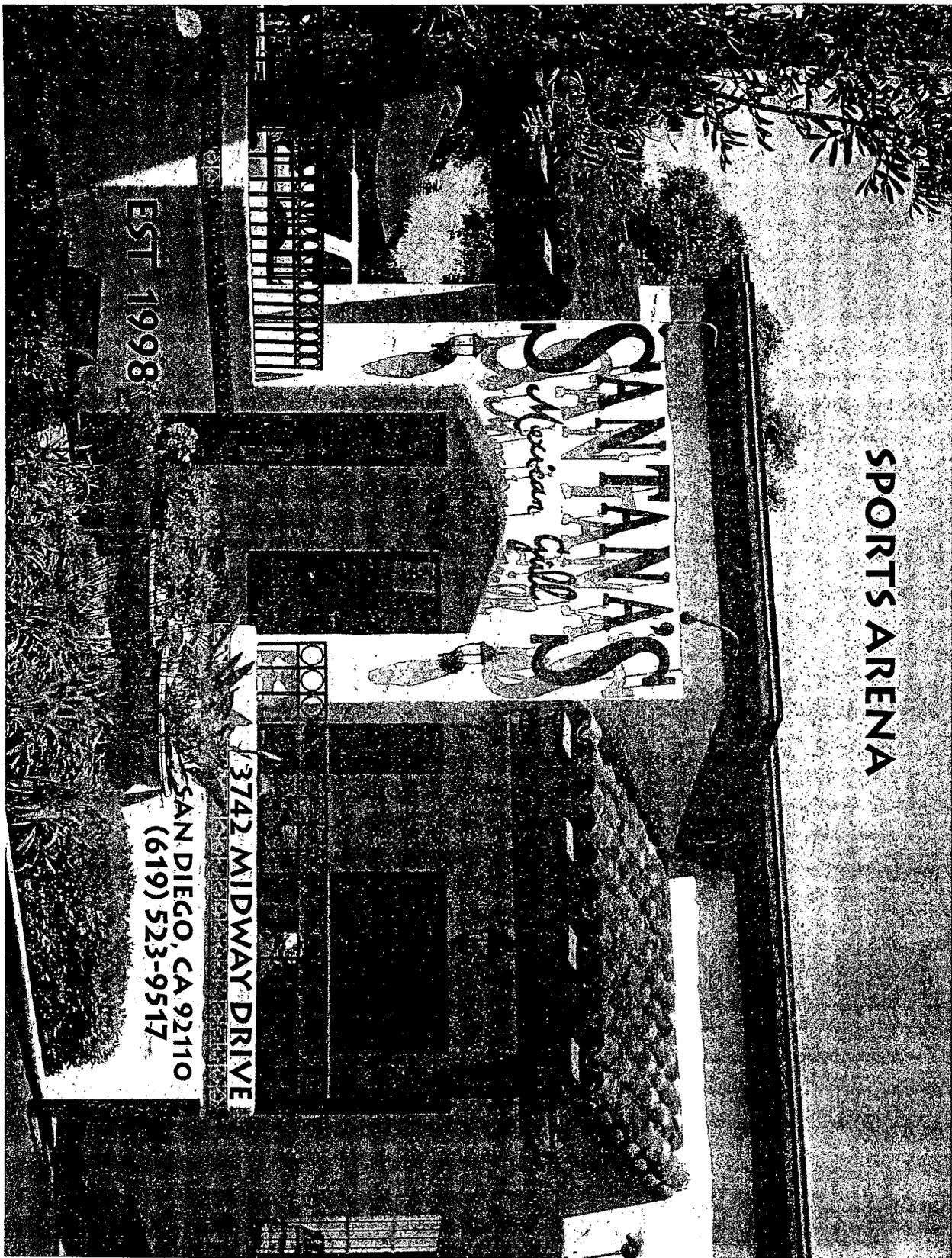
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EST.
1994

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SPORTS ARENA



SAN MARCOS

SANTANIS
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PACIFIC BEACH

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MEXICAN FOODS

EST 2004

2303 GARNETT AVE
SAN DIEGO, CA 92109
(858) 483-1227

COMBINATION PLATES

(WITH RICE, BEANS & CHIPS)
(PLEASE ORDER BY NUMBER)

1 CARNE ASADA \$5.50
GRILLED CHICKEN
ACHIOTE CHICHEN
CARNITAS
SHRIMP

SERVED WITH SIDES OF GUACAMOLE, MEXICAN SALSA, LETTUCE & (3) CORN OR (2) FLOUR TORTILLAS

2 TACOS (2) \$5.50
CARNE ASADA
BEEF
ACHIOTE CHICKEN
GRILLED CHICKEN
CARNITAS
FISH

3 BEEF ROLLED TACOS (4) \$4.25
CHICKEN FLAUTAS (3)

LETTUCE, MEXICAN SALSA, SOUR CREAM AND CHEDDAR CHEESE

4 BURRITO (1) \$4.50
CARNE ASADA
GRILLED CHICKEN
ACHIOTE CHICKEN
CARNITAS
CALIFORNIA CARNE
CALIFORNIA ACHIOTE CHICKEN
CALIFORNIA GRILLED CHICKEN
FISH

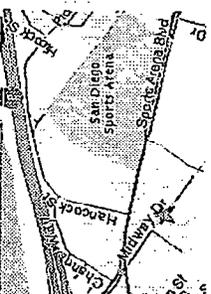
5 CHEESE OR CHICKEN ENCHILADAS (2) \$5.50
SOUR CREAM AND CHEESE
GREEN MILD TOMATILLO SAUCE
RED CHILE PASILLA SAUCE

LOCATIONS

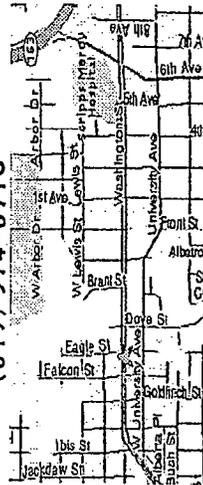
POINT LOMA BAY PARK
1480 ROSECRANS ST. 1525 MORENA BLVD.
(619) 226-2033 (619) 276-6010



SPORTS ARENA SAN MARCOS
3742 MIDWAY DR. 580 S. PACIFIC STREET
(619) 523-9517 (760) 736-4648



MISSION HILLS
719 W. WASHINGTON ST.
(619) 574-8710



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... Es Muy Bueno
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THANKS TO YOU WE HAVE BEEN SERVING YOU IN SAN DIEGO SINCE 1987. WE BELIEVE THAT FRESHER IS BETTER THAT IS WHY OUR FOOD IS PREPARED EVERY DAY IN OUR PREMISES AND OUR TORTILLAS, MEAT, POULTRY AND PRODUCE ARE DELIVERED DAILY. WE USE 100% CORN OIL AND NO PRESERVATIVES. WE THANK YOU AGAIN FOR THE OPPORTUNITY OF LETTING US SERVE YOU AND TO YOU TH HAVENT TRIED OUR FOOD WE DARE YOU TO DO SO!!! WE ALSO OFFER FREQUENT EATER CARDS, ATM MACHINE, A FRESH SALSA BAR WHEN YOU DINE-IN AT ALL OUR LOCATIONS AND FOR YOUR CONVINIENCE WE ARE

OPEN 24/7

VOTED BY BEST BURRITOS IN THE WORLD REAL WORLD SAN DIEGO 2004

BURRITOS

1 LB. CALIFORNIA \$4.25

GRILLED CARNE ASADA * ACHIOTE OR GRILLED CHICKEN WITH POTATOES, SALSA MEXICANA AND CHEDDAR CHEESE

CARNE ASADA * GRILLED CHICKEN * CARNITAS \$4.25

SALSA MEXICANA & GUACAMOLE

ACHIOTE CHICKEN \$4.25

GRILLED ACHIOTE CHICKEN WITH RICE & BEANS

1 LB. VEGGIE \$4.00

WITH YOUR CHOICE OF ANY FOUR ITEMS:
BEANS* RICE*LETTUCE*POTATOES*GUACAMOLE
MEXICAN SALSA*CHEESE*YOUR CREAM OR GRILLED MUSHROOMS

BEAN AND CHEESE \$2.75

CHICKEN CHIMICHANGA \$5.50

GRILLED CHICKEN AND BEANS*TOPPED WITH LETTUCE, MEXICAN SALSA, CHEDDAR & COTIJA CHEESE & SIDE ORDER OF GUACAMOLE & SOUR CREAM

SHRIMP BURRITO \$5.00

GRILLED SHRIMP, MEXICAN SALSA AND ACHIOTE SAUCE WITH RICE AND A ZEST OF LEMON

FISH BURRITO \$4.25

CRISPY BATTERED FISH, SHREDDED CABBAGE, MEXICAN SALSA AND OUR CREAMY TOMATILLO SAUCE

**WANT SOMETHING LIGHTER?
WITH THE SAME GREAT FLAVOR!**
NOW YOU CAN MAKE ANY OF YOUR
FAVORITE BURRITOS INTO A BOWL

SIDES

BEANS* RICE * SOUR CREAM * MEXICAN SALSA 8OZ \$1.50

GUACAMOLE * CHEESE * CARNE ASADA * ACHIOTE OR GRILLED CHICKEN 8OZ \$3.00

TACOS

CARNE ASADA * GRILLED CHICKEN OR CARNITAS \$2.00

GUACAMOLE AND MEXICAN SALSA
BEEF (SHREDDED) OR ACHIOTE CHICKEN \$2.00

LETTUCE, CHEDDAR AND ENCHILADO CHEESE

FISH \$2.00

CRISPY BATTERED FISH, SHREDDED CABBAGE, MEXICAN SALSA AND OUR CREAMY TOMATILLO SAUCE

4 BEEF ROLLED TACOS WITH CHEESE \$1.80

WITH GUACAMOLE AND CHEESE \$2.50

3 CHICKEN FLAUTAS WITH CHEESE \$2.00

WITH GUACAMOLE AND CHEESE \$2.50

QUESADILLAS

TECATE ACHIOTE OR GRILLED CHICKEN OR CARNE ASADA & JACK CHEESE SERVED WITH SIDES OF SOUR CREAM, GUACAMOLE, MEXICAN SALSA & CHIPS. \$5.50

QUESOMUSH ACHIOTE OR GRILLED CHICKEN OR CARNE ASADA, JACK CHEESE & MUSHROOMS. SERVED WITH SIDES OF MEXICAN SALSA & CHIPS. \$5.50

VALLARTA GRILLED CHICKEN OR CARNE ASADA & JACK CHEESE. SERVED WITH SIDES OF BEANS, SOUR CREAM, MEXICAN SALSA & CHIPS. \$5.50

JACK OR CHEDDAR CHEESE \$2.75

TOSTADAS

BEANS OR CHICKEN \$2.75

TOPPED WITH BEANS SOUR CREAM, CHEDDAR AND COTIJA CHEESE AND LETTUCE

DESSERT

VANILLA FLAN (CUSTARD) \$1.75

AS SEEN ON SIGNONS AND DIEGO...



LATE NIGHT-DINING

Best of San Diego

CHIPS

PLAIN 1/2 ORDER \$0.75 FULL ORDER \$1.50

CHEESE & GUACAMOLE 1/2 ORDER \$2.00 FULL ORDER \$3.75

CARNE ASADA, ACHIOTE OR GRILLED CHICKEN CHIPS OR FRIES \$2.00

SERVED WITH COTIJA & CHEDDAR CHEESE, BEANS GUACAMOLE, SOUR CREAM & MEXICAN SALSA

1/2 ORDER \$4.00 FULL ORDER \$6.00

TORTAS

CARNE ASADA CHIPS

CARNE ASADA * ACHIOTE OR GRILLED CHICKEN * HAM AND CHEESE \$4.00

WITH LETTUCE AND GUACAMOLE

BREAKFAST

5 A.M.-10:30 A.M.

CHORIZO (MEXICAN SAUSAGE) OR MACHACA (SHREDDED BEEF AND VEGETABLES) \$3.50

BURRITO OR TORTA WITH 2 EGGS \$3.50

BUENOS DIAS BURRITO \$3.50

2 EGGS, POTATOES, BACON, MEXICAN SALSA & CHEESE

PANCHO BURRITO \$3.50

2 EGGS, HAM, POTATOES AND CHEESE

EXTRAS

(ONLY INSIDE YOUR ORDER)

RICE * BEANS * SOUR CREAM * CHEESE * MEXICAN SALSA * LETTUCE \$0.50

GUACAMOLE * GRILLED MUSHROOMS \$0.70

DRINKS

LEMONADE

GUAVA

PINA

JAMAICA

HORCHATA

TAMARINDO

24 oz \$1.30

32 oz \$1.90

10 oz \$1.30

8 oz \$1.00

BOTTLED WATER

10 oz

8 oz

EXHIBIT 22

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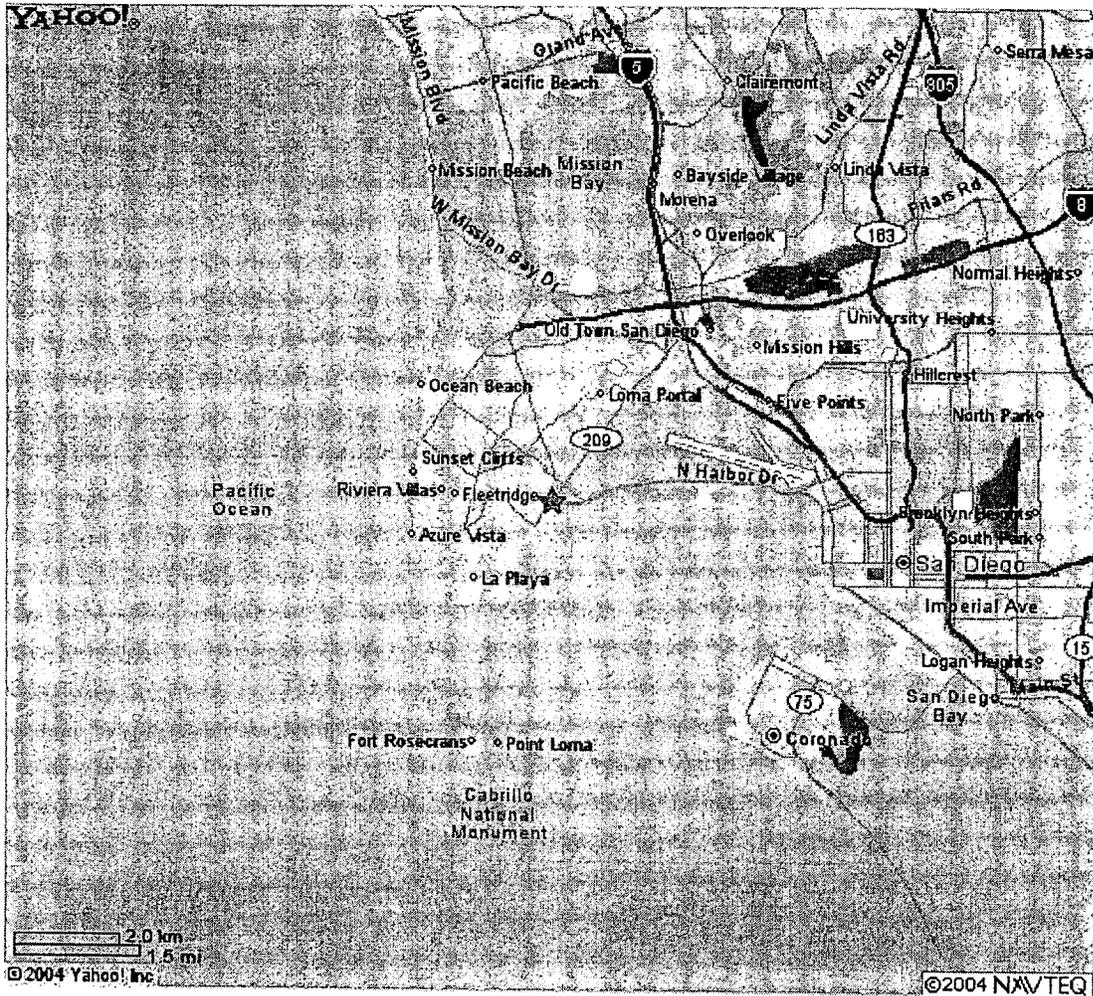
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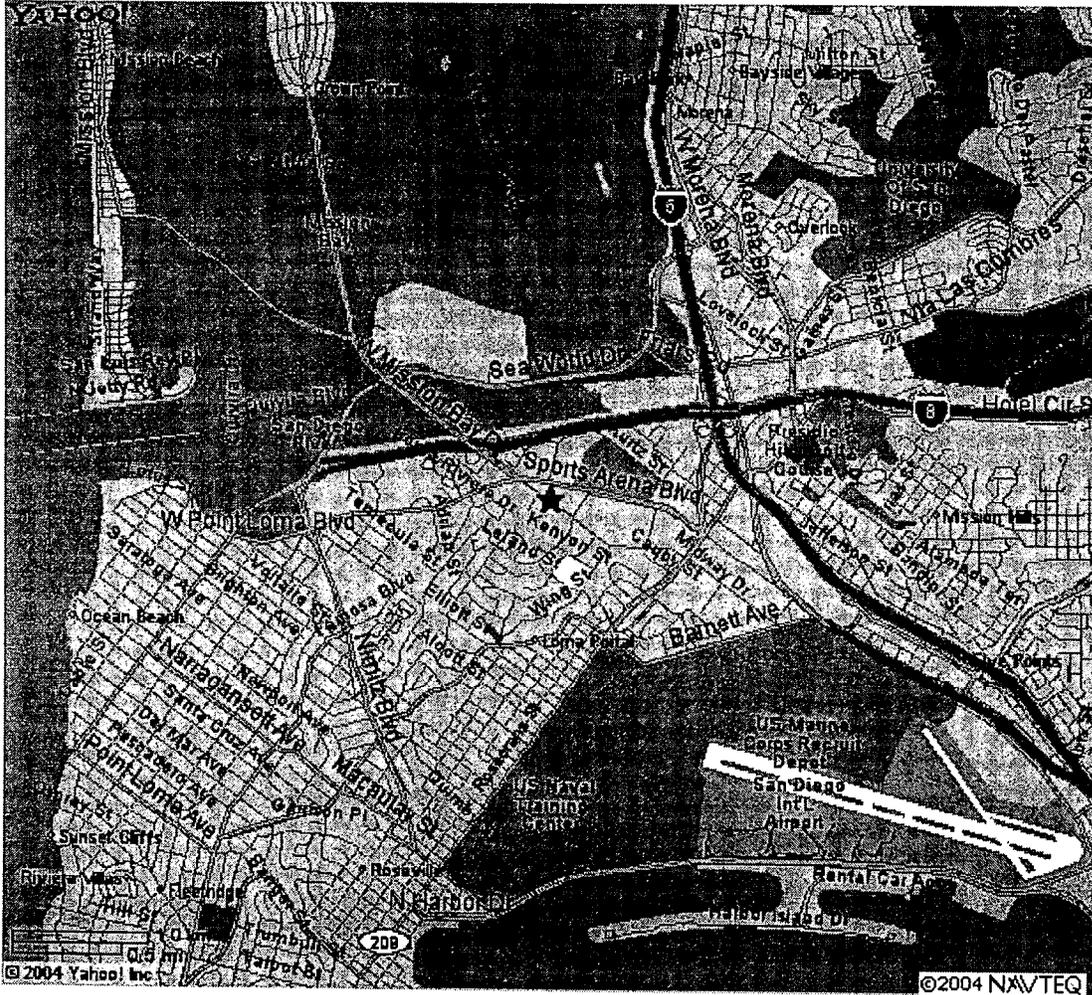
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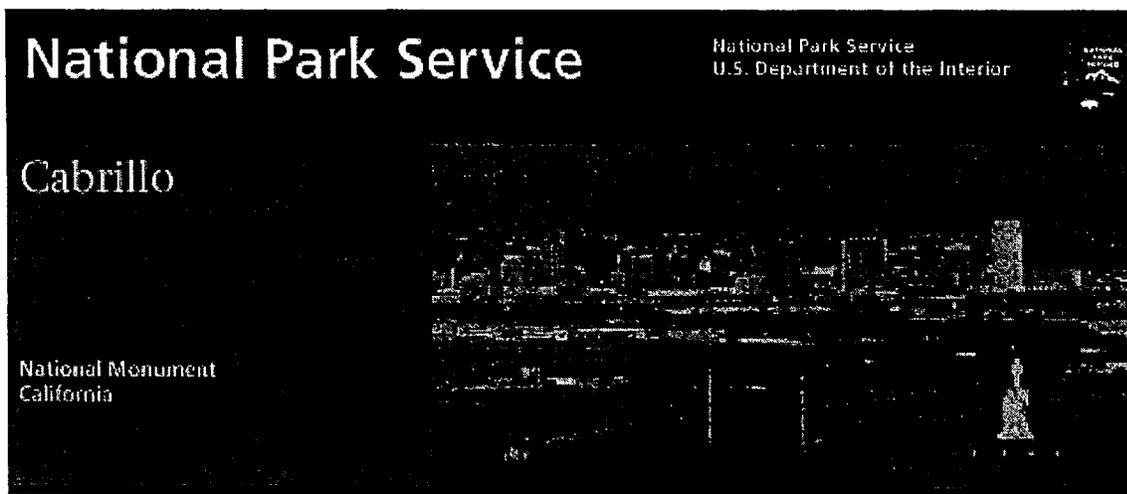
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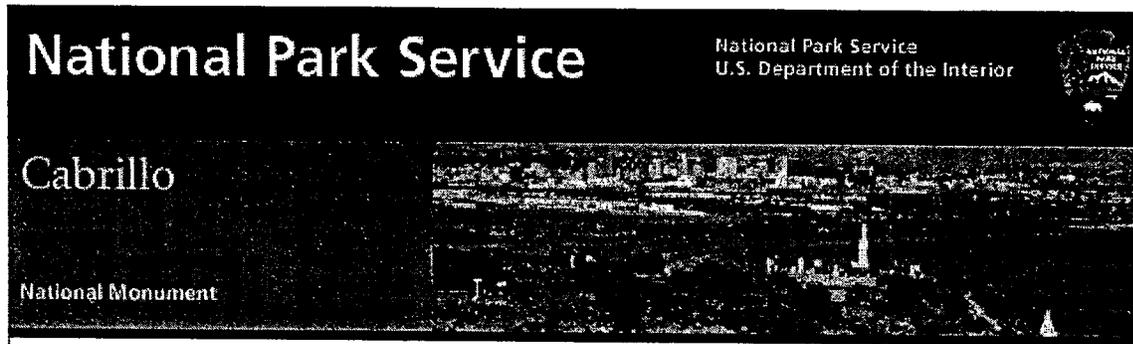
On September 28, 1542, Juan Rodríguez Cabrillo landed at San Diego Bay. This event marked the first time that a European expedition had set foot on what later became the west coast of the United States. His accomplishments were memorialized on October 14, 1913 with the establishment of Cabrillo National Monument.

The park offers a superb view of San Diego's harbor and skyline. At the highest point of the park stands the Old Point Loma Lighthouse, which has been a San Diego icon since 1854. A statue and museum in the Visitor Center commemorate Juan Rodríguez Cabrillo's exploration of the coast of California. In a former army building an exhibit tells the story of the coast artillery on Point Loma. In the winter, migrating gray whales can be seen off the coast. Native coastal sage scrub habitat along the Bayside Trail offers a quiet place to reflect and relax. On the west side of the park is a small but beautiful stretch of rocky-intertidal coastline.

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Designation

National Monument - October 14, 1913



FACTS

Acreage

Gross Area Acres for FY 2004 - 160
 Gross Area Acres for FY 2003 - 160
 Gross Area Acres for FY 2002 - 160

Visitation

Total Recreation Visits for FY 2004- 936,703
 Total Recreation Visits for FY 2003- 960,182
 Total Recreation Visits for FY 2002- 1,045,510

Budget

FY 2004 Annual Budget is \$1,258,000
 FY 2003 Annual Budget is \$1,262,000
 FY 2002 Annual Budget is \$1,260,000

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EXHIBIT 23

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Yahoo! Driving Directions

Starting from: **A** 1480 Rosecrans St, San Diego, CA 92106-2260

Arriving at: **B** Twentynine Palms, Yucca Valley, CA

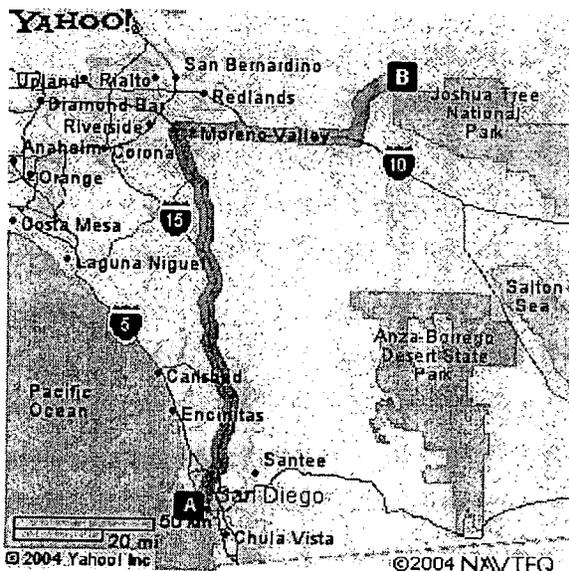
Distance: 154.9 miles Approximate Travel Time: 2 hours 32 mins

Your Directions

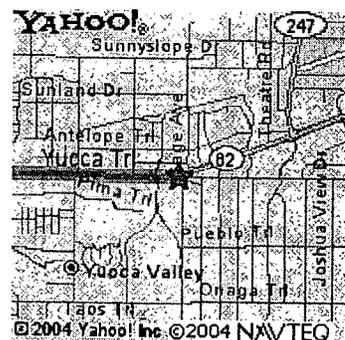
1.	Start at 1480 ROSECRANS ST, SAN DIEGO on CA-209 NORTH going towards HUGO ST,N HARBOR DR - go 2.5 mi
2.	Continue on CAMINO DEL RIO W - go 0.1 mi
3.	Take I-8 EAST towards EL CENTRO - go 2.4 mi
4.	Take the CA-163 NORTH exit towards ESCONDIDO - go 7.4 mi
5.	Take the I-15 NORTH exit - go 51.4 mi
6.	I-15 NORTH becomes I-215 NORTH - go 29.5 mi
7.	Take the CA-60 EAST exit towards BEAUMONT/INDIO - go 17.9 mi
8.	Take I-10 EAST towards BEAUMONT - go 22.4 mi
9.	Take the CA-62 exit towards 29 PALMS/YUCCA VALLEY - go 21.2 mi
10.	Arrive at [56862-56899] TWENTYNINE PALMS HWY, YUCCA VALLEY

When using any driving directions or map, it's a good idea to do a reality check and make sure the road still exists, watch out for construction, and follow all traffic safety precautions. This is only to be used as an aid in planning.

Your Full Route



Your Destination



Address:
 Twentynine Palms
 Yucca Valley, CA

EXHIBIT 23 PAGE 1 OF 1

EXHIBIT 24



Van Etten Suzumoto & Becket LLP
Attorneys at Law

M. CRIS ARMENTA
WRITER'S DIRECT DIAL NUMBER
(310) 315-8250
CARMENTA@VSBLLAW.COM

FILE NO. 05280.00002

January 25, 2005

VIA FACSIMILE & OVERNIGHT MAIL

Frederick Beretta
Knobbe Martens Olson & Bear LLP
550 West C Street
Suite 1200
San Diego, CA 92101

Re: *Santana's Grill, Inc. v. Arturo Castaneda, et al.*

Dear Fred:

Per our discussion, Petitioner's Response to Registrant's First Set of Interrogatories will be delivered to you by overnight mail. Mr. Santana Gallego and I, along with our special trademark counsel, spent a considerable amount of time on the details of the Response. As a courtesy, I am sending the Response to you by facsimile, as we had agreed. We believe that the Response is quite detailed and should answer virtually any relevant question to be put to Mr. Santana Gallego. Further, since Mr. Santana Gallego already provided detailed declarations with the Petition to Cancel, we believe that you are now in possession of every piece of evidence that we currently have in our possession, control of custody.

You wrote on January 21, 2005, with respect to attempting to confirm the deposition of Mr. Santana Gallego. As I informed you last week at the conclusion of the depositions of Mr. Abelardo Santana and Ms. Claudia Vallarta Santana, I was not then able to confirm the deposition of Mr. Santana Gallego. As you will recall, you initially wrote to me on December 6, 2004 concerning setting the deposition of Mr. Santana Gallego for January. At the time, we then had a discovery cut-off date of January 10, 2005. On December 10, 2004, I informed you that "my understanding is that [Mr. Santana's] deposition can be taken only upon consent since he is a foreign resident." A few days later, you left me a voicemail message indicating that if Mr. Santana did not consent to his deposition being taken in San Diego, you would obtain an order forcing that deposition.

Based on the events of last Thursday, Mr. Santana Gallego has reconsidered his prior inclination to appear voluntarily for deposition in San Diego. Mr. Santana Gallego is more than seventeen years old, is not well, and the emotional toil caused on him by this litigation has been tremendous. Mr. Santana Gallego and his two sons, as you will recall, were all crying at one point during Mr. Abelardo Santana's deposition. Mr. Santana Gallego is saddened by the fact

215121.1

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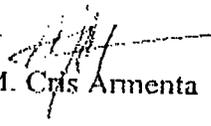
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Frederick Beretta
January 25, 2005
Page 2

that his son and daughter-in-law initiated litigation against other family members. Mr. Santana Gallego is further saddened by the events that took place at the deposition, and by the failure of his son to willingly engage in any reasonable discussions designed to heal the family and move forward towards resolution of any legal disputes. As I have indicated numerous times to you, we believe that there are ways to resolve this dispute that will be beneficial and palatable to all the parties. Mr. Santana's testimony, furthermore, will be made even more difficult and tiresome, given that he does not speak English well and does not read English, and must therefore testify through a translator.

Based on the level of detail already contained in the Response and in Mr. Santana Gallegos' declarations, and based on Mr. Santana Gallego's failing emotional health with respect to these issues, we would ask that under Section 404.03(b), you elect instead to take Mr. Santana Gallego's deposition by written question. If you would like additional time to prepare these questions, we are happy to grant you a reasonable amount of time and to work together to streamline the process. Please advise how you would like to proceed, or if you have any legal authority for proceeding in any other manner.

Sincerely,


M. Chris Armenta

MCA:kb

Encl. (By Overnight Mail Only)

215121.1

EXHIBIT 25



Van Etten Suzumoto & Becket LLP
Attorneys at Law

M. CRIS ARMENTA
WRITER'S DIRECT DIAL NUMBER
(310) 315-8250
CARMENTA@VSBLLAW.COM

FILE No. 05280.00002

February 11, 2005

VIA FACSIMILE

Frederick Beretta
Knobbe Martens Olson & Bear LLP
550 West C Street
Suite 1200
San Diego, CA 92101

Re: *Santana's Grill, Inc. v. Arturo Castaneda, et al.*

Dear Mr. Beretta:

This is in response to your email correspondence of February 10, 2005.

1. Mr. Santana Gallego's deposition: You had indicated to me previously that you would advise me how you would like to proceed with respect to the taking testimony. I understand that most attorneys would believe that deposition by written question might not be as effective, however, in this particular case, I must respectfully disagree. Mr. Santana is a man of substantial years with a very limited ability to communicate in English and who is suffering deeply as a result of this intra-family dispute. Deposition by written questions in this particular case may, in fact be, more effective than a live deposition. In any event, the TTAB expressly contemplates that a foreign party's deposition, as well as his trial testimony, is to be taken by written question. Given that Registrant failed to timely propound any deposition questions, I would be willing to investigate whether we would offer Registrant the courtesy of taking Mr. Santana Gallego's deposition by written question outside the sequence of the discovery cut-off, particular in light of the suspension of the proceeding due to the pending Motion for Summary Judgment. Please let me know if you would like me to inquire on this subject with my client and co-counsel.

2. Documents from Mr. Castaneda: This confirms that Mr. Castaneda has produced all documents, or a representative sampling, as permitted by the TTAB, of all documents in his possession, custody or control. I personally visited Mr. Castaneda's office two weeks ago to confirm the same. Any documents not previously produced have been now produced in connection with the Motion for Summary Judgment.

3. Stipulation Regarding Documents and Their Authenticity: I will await your response with respect to stipulating as to the authenticity of the documents.

219414.1

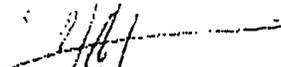
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EXHIBIT 25 PAGE 1 OF 2

Frederick Beretta
February 16, 2005
Page 2

4. Declarations: I acknowledge your position that the declarations will not be used on the trial portion of the proceeding.

Sincerely,



M. Cris Armenta

MCA:kb

cc: Donna Rubelmann, Esq.

219414.1