

ESTTA Tracking number: **ESTTA120331**

Filing date: **01/18/2007**

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

Proceeding	92043152
Party	Defendant SANTANA'S GRILL, INC. SANTANA'S GRILL, INC. 2067 Cecelia Terrace San Diego, CA 92110
Correspondence Address	Nicole Whyte Bremer Whyte Brown & O'Meara 20320 SW Birch St, 2nd Fl Newport Beach, CA 92660 UNITED STATES msandstrum@bremerandwhyte.com, mstarn@bremerandwhyte.com
Submission	Motion for Default Judgment
Filer's Name	Michael A. Sandstrum
Filer's e-mail	msandstrum@bremerandwhyte.com, mstarn@bremerandwhyte.com
Signature	/Michael A. Sandstrum/
Date	01/18/2007
Attachments	Declaration of Michael Sandstrum.pdf (85 pages)(2873117 bytes)

Nicole Whyte, Esq.
Michael Sandstrum, Esq.
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch Street, Second Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 (Fax)

Attorney 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

I hereby certify that this Declaration of Michael A. Sandstrum and the accompanying attachments, concurrently filed and served with Registrant's Motion for Judgment is being deposited with the United States Post Office via Certified Mail and addressed to Trademark Trial & Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451

12-7-06

Date


Michael A. Sandstrum

I, MICHAEL A. SANDSTRUM, HEREBY DECLARE THE FOLLOWING:

1. I am an attorney at law duly licensed to practice before all of the courts of the State of California and am a partner in the law firm of Bremer Whyte Brown & O'Meara, attorneys of record for Registrant, SANTANA'S GRILL, INC., in the above-entitled cancellation

proceedings. As such I have personal knowledge of the facts stated herein and if called upon as a witness I could and would competently testify to the below facts which are personally known to me.

2. On September 22, 2006, Petitioner made a written settlement offer to Registrant through its counsel of record, Cris Armenta. (Attached hereto as Exhibit A is a true and correct copy of the email from Ms. Armenta to me dated September 22, 2006). On the same day, September 22, 2006, Registrant confirmed its assent to the basic terms of Petitioner's settlement offer.

(Attached hereto as Exhibit B is a true and correct copy of the email from me to Ms. Armenta dated September 22, 2006).

3. In an effort to prevent prejudice to the Petitioner while the settlement agreement was being negotiated, **Registrant proposed** a two-week extension of Petitioner's then pending testimony period which was set to close on September 30, 2006. (Attached hereto as Exhibit C is a true and correct copy of the email from me to Ms. Armenta dated September 25, 2006).

4. From September 25, 2006 through October 4, 2006, Registrant sent multiple emails and made telephone calls to Petitioner's counsel regarding the pending settlement and draft language for the written Settlement Agreement and requested Petitioner's comments/proposed language regarding the same. (Attached hereto as Exhibit D are true and correct copies of the emails from me to Ms. Armenta dated September 25, 2006, September 26, 2006, September 27, 2006 and October 4, 2006).

5. On October 10, 2006, without sending any comments or proposed language to Registrant, Petitioner requested that Registrant forward a copy of its proposed settlement agreement to Petitioner. Attached hereto as Exhibit E is a true and correct copy of the email from Ms. Armenta to me dated October 10, 2006.

6. On October 12, 2006, I emailed a copy of Registrant's draft Settlement Agreement and Mutual Release and Attached to Ms. Armenta. Attached hereto as Exhibit F is a true and correct copy of the email from me to Ms. Armenta dated October 12, 2006.

7. On October 19, 2006, I sent a follow-up email to Ms. Armenta requesting her approval of the Settlement Agreement emailed on October 12, 2006, noting that time is of the essence with Registrant's impending trial testimony period set to open the following month. Attached hereto as Exhibit G is a true and correct copy of the email from me to Ms. Armenta dated October 19, 2006. I also sent follow-up emails to Petitioner's counsel, Ms. Armenta on my blackberry regarding the status of Ms. Armenta's client signatures to the written settlement agreement.

8. Finally, on October 27, 2006 and again on October 31, 2006, Ms. Armenta sent written correspondence confirming that the proposed written Settlement Agreement and Mutual Release prepared by Registrant was acceptable to Petitioner. Attached hereto as Exhibit H are true and correct copies of the emails from Ms. Armenta to me dated October 27, 2006 and October 31, 2006.

9. In confirming Petitioner's acceptance of the proposed written Settlement Agreement and Release, on November 2, 2006, Registrant sent an updated copy of the Settlement Agreement to

Petitioner for transcription from English to Spanish. The accompanying email from Registrant also requested that Petitioner provide a physical address for "Notice" issues to include in the Agreement. Attached hereto as Exhibit I is a true and correct copy of the email from me to Ms. Armenta dated November 02, 2006.

10. With no response from Petitioner to my email dated November 2, 2006, I sent additional emails to Petitioner requesting immediate execution of the mutually agreed upon written Settlement Agreement and Mutual Release. Attached hereto as Exhibit J are true and correct copies of the emails from me to Ms. Armenta dated November 6, 2006 and November 7, 2006.

11. On November 7, 2006, I obtained the consent of Petitioner to request an extension of the close of Registrant's testimony period to December 21, 2006. On November 7, 2006, I filed a consent motion with the Board which was granted on November 8, 2006.

12. With Registrant's approaching testimony period, on November 13, 2006, Registrant sent written correspondence to Petitioner demanding that Petitioner's signatures to the Agreement be received by Registrant no later than November 15, 2006. As so much time had passed, promised made and broken by Petitioner, and because the delay was negatively impacting Registrant, Registrant further notified Petitioner that if signatures were not received by November 15, 2006, Registrant would deduct \$5,000.00 from the agreed upon monetary payment to be paid to Petitioner for every week that the signatures were not received. Attached hereto as Exhibit K is a true and correct copy of the email from me to Ms. Armenta dated November 13, 2006.

13. On November 14, 2006, Ms. Armenta assured me that Petitioner's signatures to the written Settlement Agreement would be received by Registrant on November 20, 2006.

Attached as Exhibit L is a true and correct copy of the email from Ms. Armenta to me dated November 14, 2006, confirming that Petitioner's signatures would be received by Registrant on Monday, November 20, 2006 via Fed Ex delivery.

14. Then again on November 17, 2006, Ms. Armenta confirmed that Petitioner's signatures were forthcoming. Attached as Exhibit M is a true and correct copy of the email from Ms. Armenta to me dated November 17, 2006, confirming that Petitioner's signatures would be received by Registrant on Tuesday, November 21, 2006 via facsimile.

15. Further reassurance that the signatures would be delivered to Registrant was provided by Ms. Armenta on November 20, 2006. Attached as Exhibit N is a true and correct copy of the email from Ms. Armenta to me dated November 20, 2006, confirming that Petitioner's signatures would be received by Registrant on Tuesday, November 21, 2006.

16. By end of business day on November 21, 2006, Petitioner signatures had still not been received. In reply to Registrant's request for a status of the signatures, Ms. Armenta represented that the signatures were delayed but would be sent via email scan or fax on November 22, 2006. Attached as Exhibit O is a true and correct copy of the email from me to Ms. Armenta dated November 21, 2006 notifying Petitioner that signatures had not been received as promised. On November 22, 2006, Ms. Armenta replied that one of her clients had been delayed on a trip to Mexico but that all signatures would be received today (November 22, 2006) and that they would

be sent to Registrant via email scan or facsimile. Also attached as Exhibit O is a true and correct copy of the email response from Ms. Armenta to me dated November 22, 2006.

17. Despite Registrant's diligent efforts, by November 28, 2006, Registrant still had not received Petitioner's signatures to the Agreement. Attached as Exhibit P is a true and correct copy of the email from me to Ms. Armenta dated November 28, 2006, confirming that signatures had not yet been received.

18. On November 29, 2006, Ms. Armenta revealed to me that a significant problem had arisen which may require her to withdraw from any further representation of Petitioner. Ms. Armenta would not disclose the scope and extent of the potential problem. I immediately followed-up with an email confirming our conversation and requesting an immediate status of Petitioner's signature to the Settlement Agreement so that appropriate action could be taken, including a possible motion to dismiss pursuant to 37 CFR 2.132. As of the date of this declaration, I have not received a response. Attached hereto as Exhibit Q is a true and correct copy of the email from me to Ms. Armenta dated November 29, 2006.

19. Registrant and Registrant's counsel spent considerable time, money and expense in preparing for the Trial Testimony periods just prior to Petitioner's settlement offer in September 2006. With Petitioner's continued promises that the written Settlement Agreement prepared by Registrant was acceptable and that signatures to the same would be forthcoming, the time spent by Registrant and Registrant's counsel in preparing for the Trial Testimony periods several months ago has been lost. As a result, in the event that the instant motion is denied, Registrant and Registrant's counsel will be required to expend substantial additional time, attorneys' fees

and expenses to re-prepare (gear up) for the Trial Testimonial period.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: December 7, 2006

By: 
Michael A. Sandstrum

PROOF OF SERVICE

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I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 20320 S.W. Birch Street, Second Floor, Newport Beach, California 92660.

On December 7, 2006, I served the within document(s) described as:

DECLARATION OF MICHAEL A. SANDSTRUM TO REGISTRANT'S MOTION FOR JUDGMENT UNDER TRADEMARK RULE 2.132(a)

on the interested parties in this action as stated on the attached mailing list.

(BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached mailing list. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Newport Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on December 7, 2006, at Newport Beach, California.

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

Kristie Elliott

(Type or print name)



(Signature)

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

Case No. 03 CV 2340 6 (RBB)

BWB&O CLIENT: Santana's Grill, Inc., Claudia Vallarta-Santana
BWB&O FILE NO.: 1177.272

SERVICE LIST

M. Chris Armenta, Esq. The Armenta Law Firm, P.C. 233 Wilshire Blvd, Suite 400 Santa Monica, CA 90401 (310) 917-1026 (310) 917-1027 Fax	Frederick S. Berretta, Esq. KNOBBE MARTENS OLSON & BEAR 550 West C Street, Suite 1200 San Diego, CA 92101 (619) 235-8550 (619) 235-0716 Fax	
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EXHIBIT "A"

From: Cris Armenta [cris@crisarmenta.com]
Sent: Friday, September 22, 2006 4:23 PM
To: 'Mike Sandstrum'
Cc: kelliott@bremerandwhyte.com
Subject: RE: TTAB Proceeding - Petitioner's Trial Testimonial Period
Notice of Trial Testimony.

This confirms settlement offer: (1) payment of \$60K from your side to mine; (2) each side to bear fees and costs; (3) your side takes the Santana name, except for Burrito Santana and Arturo's ability to say that he is a member of the family; and (3) dismiss all proceedings.

From: Mike Sandstrum [mailto:msandstrum@bremerandwhyte.com]
Sent: Thursday, September 21, 2006 8:36 AM
To: 'Cris Armenta'
Subject: RE: TTAB Proceeding - Petitioner's Trial Testimonial Period

I will get you an answer today. In the meantime, please issue notice as required, and you can always take it off.

From: Cris Armenta [mailto:cris@crisarmenta.com]
Sent: Thursday, September 21, 2006 8:36 AM
To: 'Mike Sandstrum'
Subject: RE: TTAB Proceeding - Petitioner's Trial Testimonial Period

I am still waiting on your answer re stipulations on both sides re commerce as we discussed Monday.

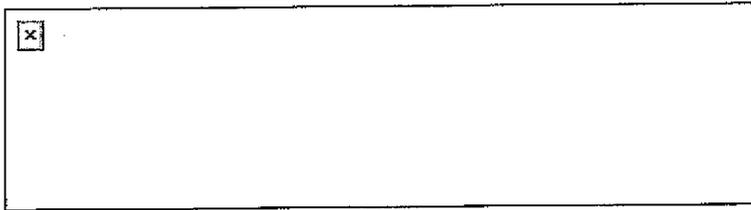
From: Mike Sandstrum [mailto:msandstrum@bremerandwhyte.com]
Sent: Thursday, September 21, 2006 8:28 AM
To: cris@crisarmenta.com
Subject: TTAB Proceeding - Petitioner's Trial Testimonial Period
Importance: High

It was a pleasure meeting with you and George. Per our conversation, I understand that you intend to call various witnesses next week, and that you will provide me with at least five days notice for each witness called. I assume that you will give notice in compliance with rules, including 703.01(d); 37 CFR § 2.123(c), etc. As you can appreciate, I will have no alternative to assert the proper objections if I am not provided with the five days/reasonable notice.

Please let me know if you have any questions.

Thanks

Michael Sandstrum, Esq.
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 fax



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Thank you.

EXHIBIT "B"

From: Mike Sandstrum [msandstrum@bremerandwhyte.com]
Sent: Friday, September 22, 2006 5:38 PM
To: 'Cris Armenta'
Subject: RE: TTAB Proceeding - Petitioner's Trial Testimonial Period

Importance: High
Sensitivity: Confidential
Cris,

I have communicated the offer to my clients. The monetary number is acceptable in and of itself, as are, in the general sense, the listed non-monetary terms. However, there are non-monetary details that need to be discussed, i.e. settlement/release agreement, scope of use by Arturo re: member of family, time frame in which name change to occur, concurrent use language re: Burrito Santana and my clients marks, etc. I am unfortunately out of the office, but will be in on Monday.

With the basic frame work of your clients offer, it would make sense to post-pone the trial depositions. Based on our conversation of this evening, I confirm that your clients offer is made in good faith. As such, I confirm that our respective clients are willing to stipulate to a two week extension of the trial testimony period pending execution of a mutually acceptable written settlement/release agreement. I also confirm that you will be forwarding a draft settlement agreement on Monday and that I will supplement the same, if needed, with language regarding the concurrent use, name change/phase out issues, and cease and desist use of design/logo, etc.

Thanks for your professional courtesy.

Enjoy the Weekend,

Mike

From: Cris Armenta [mailto:cris@crisarmenta.com]
Sent: Friday, September 22, 2006 4:23 PM
To: 'Mike Sandstrum'
Cc: kelliott@bremerandwhyte.com
Subject: RE: TTAB Proceeding - Petitioner's Trial Testimonial Period

Notice of Trial Testimony.

This confirms settlement offer: (1) payment of \$60K from your side to mine; (2) each side to bear fees and costs; (3) your side takes the Santana name, except for Burrito Santana and Arturo's ability to say that he is a member of the family; and (3) dismiss all proceedings.

From: Mike Sandstrum [mailto:msandstrum@bremerandwhyte.com]
Sent: Thursday, September 21, 2006 8:36 AM
To: 'Cris Armenta'
Subject: RE: TTAB Proceeding - Petitioner's Trial Testimonial Period

I will get you an answer today. In the meantime, please issue notice as required, and you can always take it off.

EXHIBIT "C"

From: Mike Sandstrum
Sent: Monday, September 25, 2006 2:45 PM
To: 'Cris Armenta'
Subject: TTAB testimonial period

Importance: High
Sensitivity: Confidential

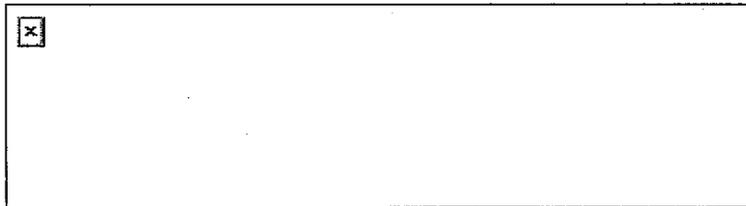
In light of the pending settlement, I confirm that your trial testimonial period will be moved for approximately two weeks while we work out the further terms/details of the written agreement – Your period will now close on October 13, 2006. We are preparing a consent motion to extend your trial testimonial period for electronic filing – due to the good faith nature of the offer, I have no worries that the Board will approve.

I am still working on the language, re: name change, phase out, concurrent use issues and should have a draft to you by tomorrow. What's the status of your draft?

Please call me to discuss.

Thanks

Michael Sandstrum, Esq.
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 fax



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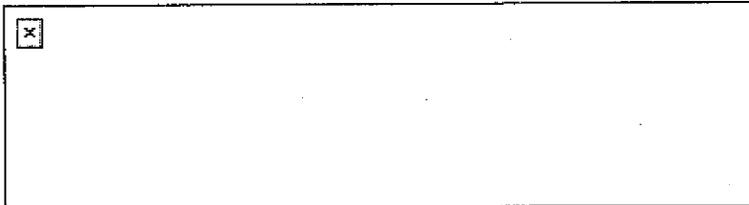
Thank you.

EXHIBIT "D"

From: Mike Sandstrum
Sent: Monday, September 25, 2006 10:07 AM
To: 'Cris Armenta'
Subject: Draft Language
How was your weekend?

I am currently working on draft language re: concurrent use issues for the name "Burrito Santana." Including, name changes, i.e. cease and desist language with phase out for use of the name Santana outside of the name "Burrito Santana" and our clients restaurant logo/design subject of Registration No. 978, etc. What's the status on your end?

Michael Sandstrum, Esq.
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
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Thank you.

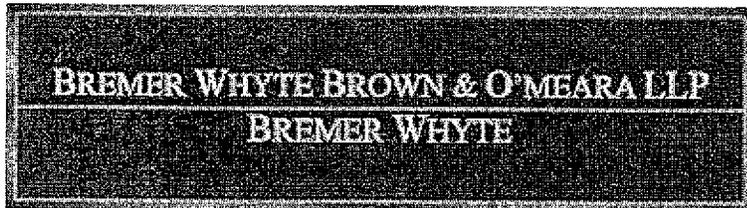
Mike Sandstrum

From: Mike Sandstrum
Sent: Monday, September 25, 2006 3:09 PM
To: 'Cris Armenta'
Subject: Testimony Period: Our File No. 1174.272
Importance: High
Sensitivity: Confidential

I hope all is well. I apologize for the piece meal emails, but I forgot to say in my last email that since I have not heard from you, I take it that Wednesday and Friday's scheduled oral testimony of the various witnesses are off calendar to be rescheduled if the pending settlement and terms are not effectuated via written agreement. Please call me.

Thanks

Michael Sandstrum, Esq.
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
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Thank you.

12/5/2006

Mike Sandstrum

From: Mike Sandstrum [msandstrum@bremerandwhyte.com]
Sent: Monday, September 25, 2006 3:37 PM
To: 'Cris Armenta'
Subject: RE: Read: TTAB Proceeding - Petitioner's Trial Testimonial Period

Good luck - call me when you get the chance. I would like to have a version of the agreement that we can present to our mutual clients, which is at least acceptable to us by Tomorrow - if possible.

Thanks

-----Original Message-----

From: Cris Armenta [mailto:cris@crisarmenta.com]
Sent: Monday, September 25, 2006 3:36 PM
To: msandstrum@bremerandwhyte.com
Subject: RE: Read: TTAB Proceeding - Petitioner's Trial Testimonial Period

In court

-----Original Message-----

From: msandstrum@bremerandwhyte.com [mailto:msandstrum@bremerandwhyte.com]
Sent: Monday, September 25, 2006 11:47 AM
To: Atty Cris Armenta
Subject: Re: Read: TTAB Proceeding - Petitioner's Trial Testimonial Period

I haven't heard from you -- what's the status on the draft agreement? I have drafted some proposed language which is still a work in progress, including recitals.

Sent from my BlackBerry wireless handheld.

-----Original Message-----

From: "Cris Armenta" <cris@crisarmenta.com>
Date: Sun, 24 Sep 2006 21:35:06
To: "'Mike Sandstrum'" <msandstrum@bremerandwhyte.com>
Subject: Read: TTAB Proceeding - Petitioner's Trial Testimonial Period

Your message

To: 'Cris Armenta'
Subject: RE: TTAB Proceeding - Petitioner's Trial Testimonial Period
Sent: 9/22/2006 5:38 PM

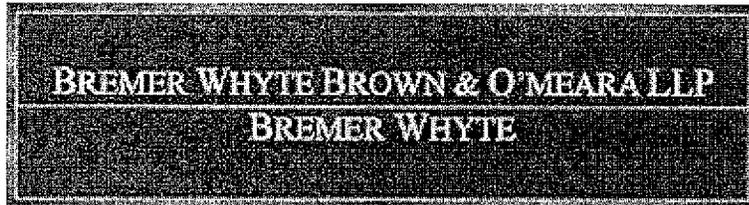
was read on 9/24/2006 9:34 PM.

Mike Sandstrum

From: Mike Sandstrum
Sent: Monday, September 25, 2006 5:47 PM
To: 'Cris Armenta'
Subject: Are you in?
Importance: High
Sensitivity: Confidential

Call me. I will be hear until at least 6:30. My Ext is 234. I have drafted settlement agreement, but need to work out some quirks. I should have something to discuss with you by 1:00 p.m. tomorrow. Let's set up a meeting on Wednesday with all parties, if possible, to see if we can't something signed. Is this possible? I will file the consent extension motion tomorrow in the a.m., unless I hear otherwise. I am trying to clear my schedule for Friday as a MSC has been scheduled, which I would like to attend personally.

Michael Sandstrum, Esq.
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
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Thank you.

12/5/2006

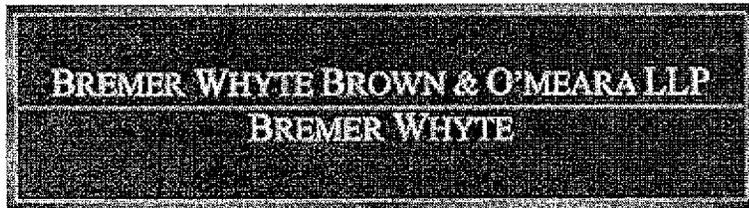
Mike Sandstrum

From: Mike Sandstrum
Sent: Tuesday, September 26, 2006 2:11 PM
To: 'Cris Armenta'
Subject: Draft Agreement -- Santana's Grill, Inc. v. Arturo Santana Lee et. al & TTAB matter: Our File No. 1174.272
Importance: High
Sensitivity: Confidential

I am still working on the draft agreement. I will be out of town Thursday returning Tuesday for various court settlement conferences. It may be prudent for you to also prepare a draft so that I can review and incorporate your language into my draft agreement to the extent it is not covered. I will be in the office all tomorrow to work on the draft agreement.

Thanks

Michael Sandstrum, Esq.
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 fax



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Thank you.

12/5/2006

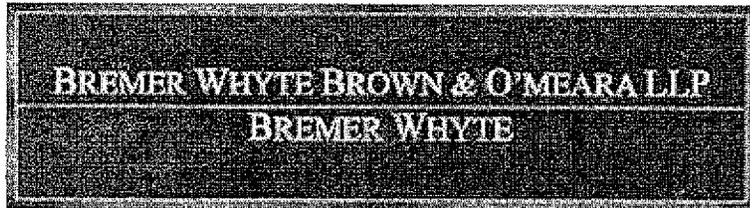
Mike Sandstrum

From: Mike Sandstrum
Sent: Wednesday, September 27, 2006 12:02 PM
To: 'Cris Armenta'
Subject: Pending Resolution issues -- Santana's Grill, Inc. v. Arturo Santana Lee et. al. & TTAB Proceedings: Our File No. 1174.272

Have you received George's draft language yet in connection with your clients' offer of "(1) payment of \$60K from your side to mine; (2) each side to bear fees and costs; (3) your side takes the Santana name, except for Burrito Santana and Arturo's ability to say that he is a member of the family; and (3) dismiss all proceedings." Once I receive his comments/suggested language, which I assume is in line with the above, I will finalize my draft and forward.

Thanks

Michael Sandstrum, Esq.
Partner
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
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Thank you.

12/5/2006

Mike Sandstrum

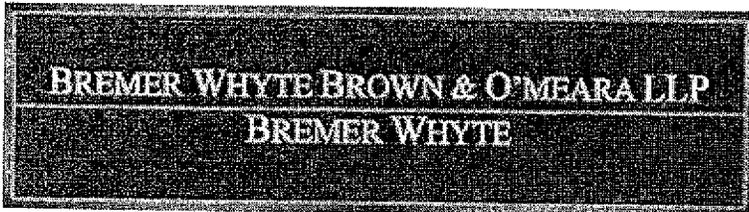
From: Mike Sandstrum
Sent: Wednesday, October 04, 2006 1:28 PM
To: 'Cris Armenta'
Subject: Status? Santana's Grill, Inc. v. Arturo Santana Lee et. al. & TTAB matter: Our File NO. 1174.272

Importance: High

I haven't heard from you. What's the status of George's comments/proposed language?

Thanks

Michael Sandstrum, Esq.
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 fax



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Thank you.

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EXHIBIT "E"

Mike Sandstrum

From: Mike Sandstrum [msandstrum@bremerandwhyte.com]
Sent: Wednesday, October 11, 2006 8:49 AM
To: 'Cris Armenta'
Subject: RE: Status? Santana's Grill, Inc. v. Arturo Santana Lee et. al. & TTAB matter: Our File NO. 1174.272

I will get you something today when I arrive back to the office.

From: Cris Armenta [mailto:cris@crisarmenta.com]
Sent: Tuesday, October 10, 2006 4:12 PM
To: 'Mike Sandstrum'
Subject: RE: Status? Santana's Grill, Inc. v. Arturo Santana Lee et. al. & TTAB matter: Our File NO. 1174.272

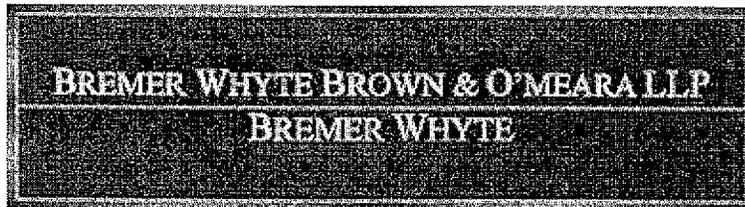
I don't have anything from George. Do you want to go ahead and send me what you have so we can wrap this up?

From: Mike Sandstrum [mailto:msandstrum@bremerandwhyte.com]
Sent: Wednesday, October 04, 2006 1:28 PM
To: Cris Armenta
Subject: Status? Santana's Grill, Inc. v. Arturo Santana Lee et. al. & TTAB matter: Our File NO. 1174.272
Importance: High

I haven't heard from you. What's the status of George's comments/proposed language?

Thanks

Michael Sandstrum, Esq.
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
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EXHIBIT "F"

Mike Sandstrum

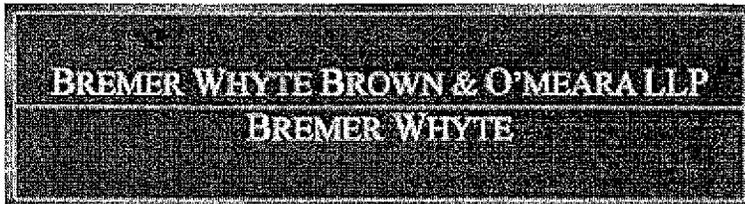
From: Mike Sandstrum
Sent: Thursday, October 12, 2006 4:33 PM
To: 'Cris Armenta'
Subject: Pending Settlement - Santana's Grill, Inc. v. Arturo Santana Lee et. al. & TTAB Proceedings: Our File No. 1174.272
Importance: High
Sensitivity: Confidential

Attached is draft settlement/release/continued use agreement re: Payment of \$60,000.00 in exchange for (1) Your clients' agreement to cease/desist use of the Santana name, including my clients Registered marks and any confusingly similar names/marks, except for the name "Burrito Santana"; (2) mutual release/dismissal with prejudice of TTAB proceedings and underlying action, (3) 1542 waiver, (4) continued use language with respect to the name "Burrito Santana", including without limitation your clients agreement to change names/trade dress and agreement not to contest our clients' Santana name and its Registered marks, or any variation thereof (5) cease/desist use of our client's restaurant logo and similar variations thereof; (6) each side to bear their own costs/fees; (7) statement by Arturo Santana Lee, etc.

Please advise of your comments asap. I have provided a copy of the draft agreement to my clients for review and approval, and reserve the right to make additional changes in accord with my client's directives. This protected in accord with Evidence Code Sections 1152, et. seq. and 1119. I welcome your input.

Thanks

Michael Sandstrum, Esq.
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
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Thank you.

12/5/2006

SETTLEMENT, MUTUAL RELEASE AND AGREEMENT

THIS SETTLEMENT, MUTUAL RELEASE AND AGREEMENT ("Agreement") is entered into as of September 22, 2006, among, the following Parties:

Plaintiff/Registrant, SANTANA'S GRILL, INC. dba SANTANA'S MEXICAN FOOD AND SANTANA'S MEXICAN GRILL, and Counterdefendant, Claudia Vallarta Santana (collectively referred to as "Registrant") on the one side, and

Petitioner/Counterdefendant, ARTURO SANTANA GALLEGO formerly dba SANTANA'S MEXICAN FOOD; Defendant/Counterclaimant, ARTURO SANTANA LEE formerly dba SANTANA'S MEXICAN GRILL; Counterdefendant/Counterclaimant, SANTANA'S MEXICAN GRILL, INC., a California Corporation, dba SANTANA'S MEXICAN GRILL AND SANTANA MEXICAN GRILL; Defendant/Counterclaimant, PEDRO SANTANA LEE dba BURRITO SANTANA; and Defendant/Counterclaimant, ARTURO CASTANEDA dba SANTANA MEXICAN FOOD AND SANTANA'S MEXICAN GRILL, on the other side (hereinafter referred to as collectively, "Settling Defendants").

The foregoing parties are hereinafter referred to as the "Agreeing Parties" with respect to the following:

A. WHEREAS, Registrant, Santana's Grill, Inc., is the exclusive owner and user of the name "SANTANA" containing trademarks in connection with its Mexican food restaurants, in interstate commerce and within California, and the exclusive owner and user in interstate and intrastate commerce of its federally registered Marks, 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 and design,® and U.S. Registration No. 2,634,976 for SANTANA'S MEXICAN GRILL®, and others (hereinafter referred to as the "Registrations"). Attached hereto as Exhibit "A," "B" and "C" are true and correct copies of Registrant's U.S. Federal Registrations as identified above.

B. WHEREAS, Registrant has marketed, advertised, and provided and continues to market, advertise and provide Mexican restaurant food services, distribute and sell goods, using the SANTANA containing trademarks, including "SANTANA MEXICAN FOOD...ES MUY BUENO®", "SANTANA'S MEXICAN FOOD...ES MUY BUENO HOME OF THE FAMOUS CALIFORNIA BURRITO" *and design*®, and "SANTANA'S MEXICAN GRILL® (collectively the "Santana Marks"), which are unique, distinctive and readily recognizable among customers and members of the trade and public.

D. WHEREAS, Registrant has objected to Settling Defendants' use of the Santana Marks and variations thereof, and has notified Settling Defendants of the infringement and the improper and unauthorized use of the Santana Marks®, and demanded immediate termination of the use of the Santana Marks as well as the immediate cessation of all further use and marketing of services and products utilizing the Santana Marks, and marks confusingly similar thereto.

E. WHEREAS, various and certain disputes have manifested themselves into a civil action filed by Registrant, Santana's Grill, Inc., in connection with the Santana Marks and

Registrant's Registrations. The civil action was filed by Registrant, Santana's Grill, Inc., in United States District Court for the Southern District of California pursuant to both federal and state laws, entitled *Santana's Grill, Inc. v. Arturo Santana Lee et. al.*, Case Number: 03 CV 2340 L (RBB), including claims for False Designation of Origin (15 USC Section 1125(a); Federal Trademark Infringement (15 USC Section 1114 / 15 USC Section 1051, et seq.; California Common and Statutory Law Trademark Infringement; Trade name infringement, and Unfair Competition (Calif. Bus. & Prof. Code Section 17200, et seq.) seeking an injunction, monetary damages, and declaratory relief as alleged in more detail by Registrant in the Action.

F. WHEREAS, certain counterclaims were subsequently filed by both Registrant and Settling Defendants in the Action. The Settling Defendants brought in Santana Mexican Grill, Inc., a corporation formed by defendant Arturo Santana Lee, to assert counterclaims against Registrant, Santana's Grill, Inc. and against Claudia Vallarta Santana in her individual capacity. In response to this pleading, Registrant, Santana's Grill, Inc., filed counterclaims against Santana Mexican Grill, Inc., and others.

G. WHEREAS, on or about March 2004, Petitioner, Arturo Santana Gallego, filed three Petitions for Cancellation of Registrant, Santana's Grill, Inc.'s Registered Service Marks with the Trademark Trial and Appeals Board ("TTAB"), Case Nos. 92043152, 92043160, and 92043175 (consolidated). In response to the cancellation petitions filed by Mr. Gallego, Registrant, Santana's Grill, Inc., also brought a declaratory judgment counterclaim against Petitioner, Arturo Santana Gallego, to establish that Santana's Grill, Inc. is the true and rightful owner of its federally registered marks. The TTAB Cancellation consolidated Cancellation Proceedings are referred to herein as the "TTAB Proceedings."

H. WHEREAS, the Agreeing Parties have been engaged in a dispute with regard to the subject Action and TTAB Proceedings. The Agreeing Parties each recognize that the dispute and any subsequent litigation as between themselves requires substantial time, effort and expense unless the Action and TTAB Proceedings are settled and terminated between them at this time; the Agreeing Parties desire to resolve all claims, disputes, and issues between Registrant on the one hand, and Settling Defendants on the other hand concerning the Action and TTAB Proceedings. The Agreeing Parties deny liability.

I. WHEREAS, the Agreeing Parties hereto wish to resolve their respective disputed claims as set forth in this Agreement, the Action and the TTAB Proceedings.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained and for other valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Agreeing Parties hereto agree as follows:

1. **Release by the Agreeing Parties**

(a) **Release by Registrant:** Except for any rights and obligations created by this Agreement, Registrant, Santana's Grill, Inc., and Claudia Vallarta Santana ("Registrant Releasing Parties"), do hereby release Settling Defendants, and each of their successors, assigns, agents, trusts, representatives, attorneys, heirs, executors, administrators, insurers, and each of them (collectively, the "Registrant Released Parties"), from any and all claims, demands, debts,

liabilities, losses, expenses, attorney fees, obligations, accounts, and causes of action of every kind and nature whatsoever, in law, equity, or otherwise, which Registrant Releasing Parties had, or now have, against the Registrant Released Parties, so that on and after the Effective Date hereof, the Registrant Releasing Party shall have no claim of any kind or nature arising from the subject Action on or against the Registrant Released Parties on or by reason of any matter, cause, action, transaction or thing whatsoever, done, said or omitted to be done which arises from the subject Action, and TTAB Proceedings.

Exclusion to Section 1(A): The foregoing release expressly excludes any claim, in law or in equity, which may accrue to Registrant against Settling Defendants arising out of Settling Defendants' breach of the terms of this Agreement, including, but not limited to, the continued use of the name/mark, "Santana", the Santana Marks, or any other confusingly similar mark by Settling Defendants or on their behalf, in any manner not expressly permitted by this Agreement.

(b) Release by Settling Defendants: Except for any rights and obligations created by this Agreement, Settling Defendants (collectively, the "Settling Defendants Releasing Parties"), do hereby for themselves absolutely and forever release Registrant, Santana's Grill, Inc., Claudia Vallarta Santana and Abelardo Santana Lee, and each of their successors, assigns, agents, affiliates, licensees, trusts, representatives, attorneys, heirs, executors, administrators, insurers, and each of them (collectively, the "Settling Defendants Released Parties"), from any and all claims, demands, debts, liabilities, losses, expenses, fees, obligations, accounts, and causes of action of every kind and nature whatsoever, in law, equity, or otherwise, which Settling Defendants Releasing Parties had, or now have, against the Settling Defendants Released Parties, so that on and after the Effective Date hereof, Settling Defendants Releasing Parties shall have no claim of any kind or nature arising out of the subject Action on or against the Settling Defendants Released Parties on or by reason of any matter, cause, action, transaction or thing whatsoever, done, said or omitted to be done which arises out of the subject Action and/or the TTAB Proceedings.

(c) Waiver of Civil Code Section 1542:

The Agreeing Parties acknowledge and understand that there is a risk that now or subsequent to the execution of this agreement, they may have claims arising out of or related to the Action and TTAB Proceedings set forth above which are unknown and unanticipated at the time this agreement is signed, and that any claims as are known or should be known may become more serious than they now expect or anticipate. Other than the obligations and exclusions referenced herein, THE AGREEING PARTIES HEREBY EXPRESSLY WAIVE ALL RIGHTS they may have in such unknown and unexpected consequences or results. The Agreeing Parties understand California Civil Code section 1542 and expressly waive its provisions. California Civil Code section 1542 provides, as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Except as otherwise provided by this Agreement, the Settling Parties hereto voluntarily, and with full knowledge of its significance, waive and relinquish any and all rights that they have under Section 1542 as well as under the provisions of all comparable, equivalent or similar statutes and principles of common law or other decisional law of any and all states of the United States and of the United States as to the claims as set forth in the Action as relates to the Subject Properties.

It is expressly understood and agreed that this waiver of Civil Code Section 1542 and the mutual release set forth in paragraph 1 hereto are material terms of this Agreement and were separately negotiated between the Settling Parties hereto.

2. Continued Use Agreement:

a. Each of the Settling Defendants agree that it will only use the name, "SANTANA" solely in conjunction with the name/mark, "BURRITO SANTANA" in singular form, and only in connection with Mexican restaurant food services (collectively, the "Services"), and for no other products, goods, or services, except as may be expressly provided elsewhere in this Agreement. Other than the name, "BURRITO SANTANA", Settling Defendants will not use or register any other mark containing the mark/name "SANTANA" or any spelling or phonetic variant of SANTANA. In addition, in recognition of the fact that Registrant uses many marks that contain SANTANA, Settling Defendants will not use SANTANA in close proximity to any other mark such that it might appear to a consumer that Settling Defendants are using the SANTANA name/mark outside and apart from the name, "BURRITO SANTANA." The intent of this provision is that Settling Defendants shall not use the name Santana, the Santana Marks or any name/mark confusingly similar thereto on any goods or services, other than the name "BURRITO SANTANA."

b. Settling Defendants agree that they will not object to, contest, oppose or interfere with, directly or indirectly, Registrant's Registrations identified above nor as to Registrant's use of the Santana name and Santana Marks ® for Mexican restaurant services/goods.

c. For so long as Settling Defendants are in compliance with the terms of this Agreement, Registrant will not object to, contest, oppose or interfere with Settling Defendants use of the name/mark, "BURRITO SANTANA" in the singular form, as permitted under this Agreement.

d. Except as permitted by this Agreement, Settling Defendants shall immediately cease and desist continued use of, manufacture, distribution, marketing, advertising, and sale of the name "Santana" and the Santana Marks®, or any confusingly similar mark. Notwithstanding the foregoing sentence, Settling Defendants shall change and phase out all use of and sale of any and all names/marks utilizing or containing the mark "SANTANA", except for the name, "BURRITO SANTANA" by no later than **March 30, 2007**. The intent of this provision is to provide Settling Defendants with sufficient time to change all signage, menus, advertising, legal documents, and similar restaurant related items containing the Santana name or Santana Marks, or using any similarly confusing name/mark, except for the name, "BURRITO SANTANA."

e. Settling Defendants shall immediately cease and desist continued use of (in any fashion), manufacture, distribution, marketing, advertising, and sale of the Registrant's restaurant logo which is the subject of U.S. Registration No. 2,682,978 for SANTANA'S MEXICAN FOOD and design,® or any variation thereof (See Exhibit "B" attached hereto and incorporated by reference herein), or any design/logo that is confusingly similar to Registrant's restaurant logo. Notwithstanding the foregoing sentence, Settling Defendants shall change and phase out all use of and sale of Registrant's restaurant logo or variations thereof, and any logo/designs that are confusingly similar to Registrant's restaurant logo or variations thereof by no later than **March 30, 2007**. The intent of this provision is to provide Settling Defendants with sufficient time to change all signage, menus, advertising, and similar restaurant related items containing Registrant's restaurant logo or any similar variations thereof.

f. As set forth in this Agreement, Settling Defendants may, in connection with Mexican restaurant services, use the name/mark "BURRITO SANTANA" in the singular form, only. Settling Defendants agree that they will not use the name "SANTANA," or "SANTANA'S" separate and apart from the name "BURRITO SANTANA."

g. Settling Defendants shall always use, and ensure that they and any licensees and all distributors use the name "BURRITO SANTANA" in a manner consistent with proper trademark usage and in accordance with this Agreement.

h. Quality Standards: Registrant is concerned that the SANTANA name, even when used in conjunction with the name "BURRITO SANTANA", represent goods of high quality, even if used in a manner that does not create a likelihood of confusion, so as to avoid any tarnishment of the name, SANTANA in connection with Mexican restaurant food services. Accordingly, Settling Defendants agree to maintain at least that standard of quality maintained by Settling Defendants for the restaurant services as of the Effective Date of this Agreement as the overall standard of quality for restaurant services provided/sold under or in connection with the "BURRITO SANTANA" name.

i. Settling Defendants will take all necessary and reasonable steps to avoid and eliminate any instance of confusion with Registrant's Santana Marks, or its Santana mark/name used in connection with Mexican restaurant food services, if such instance comes to the attention of the Settling Defendants.

j. Termination. In the event Settling Defendants commit a breach of any of the obligations under this Section 2 of this Agreement, Registrant may provide written notice to Settling Defendants, and Settling Defendants shall cure such breach within ninety (90) days of the date of the written notice. If Settling Defendants fail to cure the breach within the ninety (90) day cure period, Registrant may terminate the consent provided under Section 2 of this Agreement by delivery of written notice to Settling Defendants. Upon termination of the consent provided under Section 2, Settling Defendants shall immediately stop all use of the mark/name SANTANA, in the singular or plural form. Written notice of any breach will be addressed to _____ for all Settling Defendants.

k. Settling Defendants recognize that Registrant's use of the Santana Marks® and the name Santana, in its singular or plural form, or any variations thereof for its Mexican

restaurant services and on its products are distinctive in the mind of the public. Settling Defendants agree that they will not during the term of this Agreement, or thereafter, attack title or any rights of Registrant in and to the Santana Marks/Registrations in connection with its Mexican food restaurants, including the Santana Marks which are the subject matter of 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 and design, and U.S. Registration No. 2,634,976 for SANTANA'S MEXICAN GRILL, or any SANTANA containing trademark used by Registrant, except for "BURRITO SANTANA."

l. Settling Defendants shall not take any action, that would infringe upon, harm or contest the proprietary of Registrant in and to the Santana's Marks®, or any variation thereof.

m. Settling Defendant, Santana's Mexican Grill, Inc., by and through its owner, Arturo Santana Lee, shall change its Articles of Incorporation and shall terminate use of the name "Santana's Mexican Grill, Inc. The name change shall be consistent and in compliance with this Agreement.

n. Settling Defendants shall immediately change and cease and desist use of any fictitious business name statements bearing the Santana Marks® or confusingly similar marks containing the "Santana" name, in the singular or plural form. However, Settling Defendants may use and apply for fictitious business name statement(s) for "Burrito Santana."

o. No Waiver. Section 2 may not be waived or modified except by a written agreement signed by Registrant or its successors, and Settling Defendants or its successors. The failure of Registrant to enforce, or the delay by Registrant in enforcing any of its rights under this Agreement shall not be deemed as a continuing waiver or a modification thereof and Registrant may, within the time provided by applicable law, commence appropriate legal proceedings to enforce any or all of such rights.

p. Settling Defendant, Arturo Santana Lee, is permitted to disclose, at that restaurants he controls/owns, that he is the son of Arturo Santana Gallego, the founder of the first Mexican restaurant in San Diego County named "Santana's Mexican Food, which was founded in or around 1987. However, the statement shall not reference Registrant's restaurants (except as to the Point Loma restaurant), and shall not be used in a manner that could likely cause customer confusion between Settling Defendants' restaurants and Registrant's restaurants, now existing or in the future. If statement references Registrant's Point Loma restaurant, the statement shall contain language that Registrant's Point Loma Restaurant has no affiliation with Arturo Santana Lee's restaurants. The statement and the manner in which it is used shall be subject to Registrant's approval, which approval/denial will not be unreasonably withheld or delayed. Any disagreement as to the manner and terms in which the statement is used and/or the wording of the statement shall be referred first to mediation upon 60 days written demand, and if a resolution does not occur, be the subject of binding arbitration pursuant to California law and the laws of the United States.

q. **Advertising and Marketing.** Settling Defendants shall cease and desist use of the Santana name and Santana Marks, except as to the name "Burrito Santana", in any advertising

and marketing. Settling Defendants shall not use the "Burrito Santana" name in any manner that might materially diminish and/or tarnish the image and/or reputation, if any, of that name/mark.

r. **Trade Dress.** Settling Defendants shall cease and desist use of any trade dress symbol, or design, including the saw tooth (triangular) design or variations thereof as identified on Registrant's restaurant logo (see Exhibit B) or any trade dress that is/are confusingly similar to Registrant's restaurants and its logo and designs.

3. **Good Faith Approved by Agreeing Parties:** All Agreeing Parties agree that the instant settlement which is the subject matter of this Agreement is made in good faith pursuant to the provisions of Code of Civil Procedure section 877.6 and other applicable Federal and California authority.

4. **Covenants/Promises/Consideration:** In further consideration for the foregoing, including the mutual releases provided above and the promises and covenants set forth in this Agreement, the Agreeing Parties agree as follows:

a. **Payment:** Registrant shall pay, jointly, the lump sum total of sixty thousand dollars (\$60,000.00) to Settling Defendants to be received by Settling Defendants' counsel of record, Cris Armenta of The Armenta Law Firm, no later than **April 10, 2007, or 10 days after the Settling Defendants are in compliance with Section 2 and 4 of this Agreement, which ever occurs first.** The payment of \$60,000.00 ("Payment") shall be made payable to "_____", tax I.D. No. _____; at _____.

In the event Registrant does not timely make the Payment by the due date set forth in paragraph 4a. above, interest will start accruing at 10% per annum, unless the Agreeing Parties agree otherwise in writing.

b. **Representation:** Settling Defendants warrant and represent that they will change all signage, and other restaurant related items and materials bearing the name/mark "Santana," in the singular or plural form, or the Santana Marks, including without limitation, Santana's Mexican Food and/or Santana's Mexican Grill, or any variation thereof, except for the name "Burrito Santana."

c. **Cease/Desist Use of Mark:** Settling Defendants agree not to use, produce, manufacture, market, or otherwise place into interstate or intrastate commerce or anywhere within the world, any service or product using the name and/or mark "SANTANA" in the singular or plural form, the Santana Marks®, or any other confusingly similar mark, without the express written consent of Registrant. The only express exception being the consent to use the name "Burrito Santana."

e. **Change to Logo:** As set forth above, and except as permitted by this Agreement, Settling Defendants agree to cease and desist use of the Registrant's restaurant logo or any variation thereof (see Exhibit B), to one that looks significantly different from the Registrant logo and used by Registrant, including change of font style. The new logo shall be subject to Registrant's approval, which approval will not be unreasonably withheld or delayed.

f. Settling Defendants agree that they will not file or cause to be filed or otherwise acquire rights in any trademark application or registration anywhere in the world for any mark containing SANTANA any other confusingly similar mark, except as provided in this Agreement.

g. **Confidential:** The monetary dollar amount of this settlement shall not be disclosed to anyone by Settling Defendants without specific, prior written consent from the Registrant, except as necessary to Settling Defendants to their lawyers, insurers, accountants, government, and financial consultants for tax purposes, or as otherwise required by law/Court Order. However, Registrant shall have the sole discretion to disclose the monetary dollar amount to third parties.

i. **Cost/Fees:** Each party to this Agreement, Action and TTAB Proceedings are to bear their own costs and attorneys' fees and other expenses arising out of the Action and TTAB Proceedings;

j. **Signatures:** Settling Defendants shall sign/execute this Agreement by October ____, 2006, and shall send their signatures to this Agreement via facsimile to Registrant's counsel, Bremer Whyte Brown & O'Meara LLP attention Michael Sandstrum, Esq. at (949) 221-1001 by October ____, 2006 (close of business) and shall mail the original signatures to this Agreement to Registrant's counsel, Bremer Whyte Brown & O'Meara LLP attention Michael Sandstrum, Esq., at 20320 S.W. Birch Street, 2nd Floor, Newport Beach, CA 92660 by October ____, 2006. Registrant, Santana's Grill, Inc. and Claudia Vallarta Santana, shall forward their signatures to this Agreement via U.S. mail, to the attention of Cris Armenta, The Armenta Law Offices _____ counsel for Settling Defendants, within 5 business days after receipt of Settling Defendants' original signatures to this Agreement.

k. **Dismissal of Action:** In exchange for the covenants, agreements, promises and consideration as set forth in this Agreement, Registrant, Santana's Grill, Inc. and Claudia Vallarta Santana, and each of the Settling Defendants agree to dismiss their respective complaints and counterclaims and claims asserted in the Action and TTAB Proceedings against one another with prejudice. The dismissals shall be filed within 10 days of receipt of the original signatures of all Agreeing Parties to this Agreement by Registrant's counsel of record. If Settling Defendants breach the terms of this Agreement, the dismissal of Registrant's Complaint in the Action shall then be deemed to be without prejudice.

WARRANTIES AND ACKNOWLEDGMENTS

5. **Legal Holder:** This Agreement is a compromise between and amongst the parties hereto for the complete and final settlement of all claims, disputes and differences existing as of the date this Agreement is signed, and is made in consideration of the mutual promises set forth herein, except as otherwise provided for in this Agreement. Liability is expressly denied. The Parties hereby warrant and represent that they each own and hold title to claims that were asserted against the other in the Action and TTAB Proceedings, and that they each have the right to dismiss and release those claims, and they have not heretofore assigned, transferred or conveyed, or purported to assign, transfer or convey to anyone any claim, demand, debt, liability, account, obligation, or cause of action herein released.

6. **Beneficiaries:** Except as otherwise specifically provided in this Agreement, no persons or entities other than the Agreeing Parties are intended to be or should be construed to be a beneficiary of any of the provisions of this Agreement.

7. **Enforceability/Jurisdiction:** The Agreeing Parties do hereby agree that each has the right to enforce this Agreement, or any provision thereof, by filing any appropriate motion or proceeding or action, including, without limitation, a motion pursuant to applicable law in the U.S. District Court, Southern District of California, where the Action is venued. The Agreeing Parties further agree, acknowledge and stipulate that the Court in the Action shall retain jurisdiction over the Agreeing Parties to determine any motion or proceeding brought pursuant to this Agreement, including, without limitation, the enforcement thereof. It is stipulated between the Agreeing Parties that the U.S. District Court, Southern District of California shall have jurisdiction and shall be the place of venue in any matter arising out of Settling Defendants' breach of this Agreement or the enforcement thereof.

8. **Investigation:** The Agreeing Parties hereto have thoroughly investigated the facts relating to the aforementioned dispute. The parties hereto warrant that they freely entered into this Agreement and are not entering into this Agreement because of any duress or fear and are fully authorized to enter into the terms and conditions set forth herein, to execute the Agreement, and to legally bind the parties. The Agreeing Parties hereto further warrant that they have read this Agreement, have consulted with their attorneys, or have had the reasonable opportunity to consult with an attorney, and understand and agree to the provisions herein.

9. **Reliance:** The Agreeing Parties hereto have not relied upon any statement or representation by any party hereto or any agent, employee, representative or attorney for any party hereto regarding any facts relied upon in entering into this Agreement, except for the representations made herein.

10. **Neutral Interpretation:** This Agreement and the documents and instruments executed in connection with this Agreement constitute the product of negotiations of the Agreeing Parties, and the enforcement hereof shall be interpreted in a neutral manner and not more strongly for or against any party based upon the source of the draftsmanship hereof.

11. **Integration Clause:** Except as otherwise provided herein, this Agreement constitutes the entire agreement pertaining to the subject matter hereof and fully supersedes any and all prior understandings, representations, warranties, and agreements between the parties, or any of them, pertaining to the subject matter hereof, and, except as expressly contained herein or the Consent Judgment decree, may be modified only by written agreement signed by the parties hereto.

12. **Authorization:** Each party signing this Agreement and any documents executed in connection with this Agreement, whether signed individually or on behalf of any person or entity, warrants and represents that he has full authority to execute it on behalf of the party on whose behalf he so signs. Each separately acknowledges and represents that the representations and warranties contained herein are an essential and material provision of this Agreement and shall survive execution of this Agreement. Each party agrees to perform any further acts, and to execute and deliver such documents as are reasonably necessary or appropriate to fully implement the provisions of this Agreement.

13. **Attorneys' Fees:** In the event that any party hereto should bring any action, suit or other proceeding against any other party hereto, on any claim, demand, debt, liability, obligation, account or cause of action herein discharged and released, or contesting the validity of this Agreement, or attempting to enforce, remedy, prevent or obtain relief from any breach of this Agreement, the prevailing party shall recover all of such party's reasonable attorneys' fees and costs incurred in such action.

14. **Successors and Assigns:** This Agreement shall be binding upon and inure to the benefit of each of the parties, their respective assigns, successors in interest and legal representatives.

15. **Controlling Law:** This Agreement is made and entered into within the United States of America, and specifically, in the State of California and shall in all respects be interpreted and enforced and governed by and under the laws of the United States and California.

16. **Headings and Pronouns:** The headings in this Agreement are for convenience only and shall not affect, govern or control the construction hereof. Masculine or feminine pronouns shall be substituted for the neuter forms, and feminine pronouns shall be substituted for the masculine, and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution.

17. **Fees & Costs:** All Agreeing Parties to this Agreement shall bear their own costs, expenses, and attorneys' fees incurred in the Action and TTAB Proceedings.

18. **Severability:** If any provision of this Agreement is found to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provisions shall be fully severable, provided that parties retain the material benefits of the Agreement. This Agreement shall be construed and enforced as if such illegal, invalid, or enforceable provision never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provisions or by severance from this Agreement.

19. **Counterparts:** This Agreement shall be effective only after all parties have signed same in the spaces provided. This Agreement may be executed in multiple counterpart copies, each of which shall be deemed an original. Facsimile signatures may serve as an original. The terms of this Agreement are contractual and not a mere recital.

CAUTION: READ THIS ENTIRE DOCUMENT BEFORE SIGNING BELOW.

Dated: _____

SANTANA'S GRILL, INC.

By: _____

Title: _____
[authorized representative]

CAUTION: READ THIS ENTIRE DOCUMENT BEFORE SIGNING BELOW.

Dated: _____

CLAUDIA VALLARTA SANTANA

By: _____

Dated: _____

ARTURO SANTANA GALLEGO

By: _____

Dated: _____

ARTURO SANTANA LEE

By: _____

Dated: _____

SANTANA'S MEXICAN GRILL, INC.

By: _____

Dated: _____

PEDRO SANTANA LEE dba BURRITO
SANTANA

By: _____

Dated: _____

ARTURO CASTANEDA

By: _____

EXHIBIT "G"

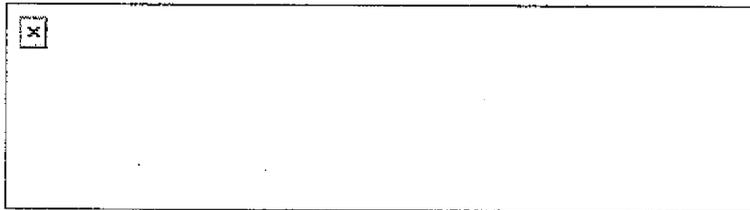
Mike Sandstrum

From: Mike Sandstrum
Sent: Thursday, October 19, 2006 4:16 PM
To: 'Cris Armenta'
Subject: Status - Santana's Grill, Inc. v. Arturo Santana Lee et. al. & TTAB matter: Our File 1174.272
Importance: High

I hope things are well. I haven't heard from you in connection with the draft agreement, I assume it is all ok. My trial testimonial period starts next month and I would like to get this wrapped up soon. I will contact my clients regarding any further additions/changes that they may have, if any.

Thanks

Michael Sandstrum, Esq.
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 fax



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Thank you.

12/5/2006

EXHIBIT "H"

From: Mike Sandstrum [msandstrum@bremerandwhyte.com]
Sent: Tuesday, October 31, 2006 3:57 PM
To: 'C SANTANA'
Subject: FW: Status??

If it will get the process resolved, I will obtain carrier approval to pay a portion of the translation fee.

-----Original Message-----

From: Cris Armenta [mailto:cris@crisarmenta.com]
Sent: Tuesday, October 31, 2006 3:56 PM
To: 'Mike Sandstrum'
Subject: RE: Status??

Lét me get an estimate on the translation costs from my service. They are agreeable on the material points.

-----Original Message-----

From: Mike Sandstrum [mailto:msandstrum@bremerandwhyte.com]
Sent: Tuesday, October 31, 2006 3:53 PM
To: 'Cris Armenta'
Subject: RE: Status??

I am not exactly sure what your asking. When can you get client approval, I would like to get this wrapped up this week. If you asking to share the costs, I will talk to my clients, but I need to know the dollar amount that we are talking about. That said, my clients are also paying a lot of money in connection with the settlement.

Do you see any problems with getting the agreement signed by Monday?

Please call me.

-----Original Message-----

From: Cris Armenta [mailto:cris@crisarmenta.com]
Sent: Friday, October 27, 2006 1:51 PM
To: msandstrum@bremerandwhyte.com
Subject: RE: Status??

George and I are of the view that the agreement is fine as is, given that our clients are basically giving up everything. We need to get it translated to discuss with the clients. I would just as soon not have my clients bear this expense. Any ideas?

-----Original Message-----

From: msandstrum@bremerandwhyte.com [mailto:msandstrum@bremerandwhyte.com]
Sent: Thursday, October 26, 2006 10:57 AM
To: Atty Cris Armenta
Subject: Status??

I haven't heard from you. What is the status regarding the settlement agreement? Have your clients signed?
Sent from my BlackBerry wireless handheld.

EXHIBIT "I"

Mike Sandstrum

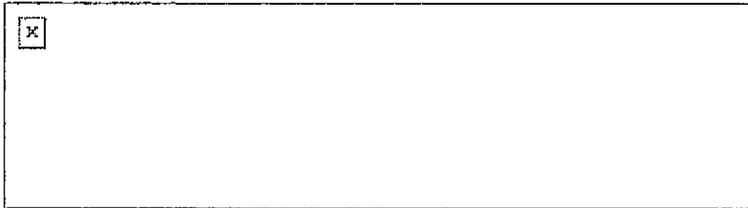
From: Mike Sandstrum
Sent: Thursday, November 02, 2006 3:51 PM
To: 'Cris Armenta'
Subject: Status?

Based on your recent emails, I confirm that you, George and your clients have approved the written settlement and release agreement which this office forwarded to your attention. As I understand, the next step is to have the agreement transcribed and attached as an exhibit to the initial agreement for signature. Attached is a revised agreement to reflect that a transcribe copy is attached thereto as Exhibit "A." **We also need to discuss some areas of the Agreement that need Address information for Notice issues (see page 5 & 7 and 8). I also changed the Month from October to November Page 8 ¶ J.**

What is the status on the translation issue? Estimate? The matter has been tentatively settled since Sept 1st. We need to bring the case to a closure. Are you available to discuss today, tomorrow?

Thanks,

Michael Sandstrum, Esq.
Partner
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 fax



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This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify us by reply e-mail, by forwarding this to postmaster@bremerandwhyte.com or by telephone at (949)221-1000; and delete the original transmission and its attachments without reading or saving in any manner.

Thank you.

12/5/2006

SETTLEMENT, MUTUAL RELEASE AND AGREEMENT

THIS SETTLEMENT, MUTUAL RELEASE AND AGREEMENT ("Agreement") is entered into as of September 22, 2006, among, the following Parties:

Plaintiff/Registrant, SANTANA'S GRILL, INC. dba SANTANA'S MEXICAN FOOD AND SANTANA'S MEXICAN GRILL, and Counterdefendant, Claudia Vallarta Santana (collectively referred to as "Registrant") on the one side, and

Petitioner/Counterdefendant, ARTURO SANTANA GALLEGO formerly dba SANTANA'S MEXICAN FOOD; Defendant/Counterclaimant, ARTURO SANTANA LEE formerly dba SANTANA'S MEXICAN GRILL; Counterdefendant/Counterclaimant, SANTANA'S MEXICAN GRILL, INC., a California Corporation, dba SANTANA'S MEXICAN GRILL AND SANTANA MEXICAN GRILL; Defendant/Counterclaimant, PEDRO SANTANA LEE dba BURRITO SANTANA; and Defendant/Counterclaimant, ARTURO CASTANEDA dba SANTANA MEXICAN FOOD AND SANTANA'S MEXICAN GRILL, on the other side (hereinafter referred to as collectively, "Settling Defendants").

The foregoing parties are hereinafter referred to as the "Agreeing Parties" with respect to the following:

A. WHEREAS, Registrant, Santana's Grill, Inc., is the exclusive owner and user of the name "SANTANA" containing trademarks in connection with its Mexican food restaurants, in interstate commerce and within California, and the exclusive owner and user in interstate and intrastate commerce of its federally registered Marks, 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 and design,® and U.S. Registration No. 2,634,976 for SANTANA'S MEXICAN GRILL®, and others (hereinafter referred to as the "Registrations"). Attached hereto as Exhibit "A," "B" and "C" are true and correct copies of Registrant's U.S. Federal Registrations as identified above.

B. WHEREAS, Registrant has marketed, advertised, and provided and continues to market, advertise and provide Mexican restaurant food services, distribute and sell goods, using the SANTANA containing trademarks, including "SANTANA MEXICAN FOOD...ES MUY BUENO®", "SANTANA'S MEXICAN FOOD...ES MUY BUENO HOME OF THE FAMOUS CALIFORNIA BURRITO" *and design*®, and "SANTANA'S MEXICAN GRILL® (collectively the "Santana Marks"), which are unique, distinctive and readily recognizable among customers and members of the trade and public.

D. WHEREAS, Registrant has objected to Settling Defendants' use of the Santana Marks and variations thereof, and has notified Settling Defendants of the infringement and the improper and unauthorized use of the Santana Marks®, and demanded immediate termination of the use of the Santana Marks as well as the immediate cessation of all further use and marketing of services and products utilizing the Santana Marks, and marks confusingly similar thereto.

E. WHEREAS, various and certain disputes have manifested themselves into a civil action filed by Registrant, Santana's Grill, Inc., in connection with the Santana Marks and

Registrant's Registrations. The civil action was filed by Registrant, Santana's Grill, Inc., in United States District Court for the Southern District of California pursuant to both federal and state laws, entitled *Santana's Grill, Inc. v. Arturo Santana Lee et. al.*, Case Number: 03 CV 2340 L (RBB), including claims for False Designation of Origin (15 USC Section 1125(a); Federal Trademark Infringement (15 USC Section 1114 / 15 USC Section 1051, et seq.; California Common and Statutory Law Trademark Infringement; Trade name infringement, and Unfair Competition (Calif. Bus. & Prof. Code Section 17200, et seq.) seeking an injunction, monetary damages, and declaratory relief as alleged in more detail by Registrant in the Action.

F. WHEREAS, certain counterclaims were subsequently filed by both Registrant and Settling Defendants in the Action. The Settling Defendants brought in Santana Mexican Grill, Inc., a corporation formed by defendant Arturo Santana Lee, to assert counterclaims against Registrant, Santana's Grill, Inc. and against Claudia Vallarta Santana in her individual capacity. In response to this pleading, Registrant, Santana's Grill, Inc., filed counterclaims against Santana Mexican Grill, Inc., and others.

G. WHEREAS, on or about March 2004, Petitioner, Arturo Santana Gallego, filed three Petitions for Cancellation of Registrant, Santana's Grill, Inc.'s Registered Service Marks with the Trademark Trial and Appeals Board ("TTAB"), Case Nos. 92043152, 92043160, and 92043175 (consolidated). In response to the cancellation petitions filed by Mr. Gallego, Registrant, Santana's Grill, Inc., also brought a declaratory judgment counterclaim against Petitioner, Arturo Santana Gallego, to establish that Santana's Grill, Inc. is the true and rightful owner of its federally registered marks. The TTAB Cancellation consolidated Cancellation Proceedings are referred to herein as the "TTAB Proceedings."

H. WHEREAS, the Agreeing Parties have been engaged in a dispute with regard to the subject Action and TTAB Proceedings. The Agreeing Parties each recognize that the dispute and any subsequent litigation as between themselves requires substantial time, effort and expense unless the Action and TTAB Proceedings are settled and terminated between them at this time; the Agreeing Parties desire to resolve all claims, disputes, and issues between Registrant on the one hand, and Settling Defendants on the other hand concerning the Action and TTAB Proceedings. The Agreeing Parties deny liability.

I. WHEREAS, the Agreeing Parties hereto wish to resolve their respective disputed claims as set forth in this Agreement, the Action and the TTAB Proceedings.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained and for other valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Agreeing Parties hereto agree as follows:

1. **Release by the Agreeing Parties**

(a) **Release by Registrant:** Except for any rights and obligations created by this Agreement, Registrant, Santana's Grill, Inc., and Claudia Vallarta Santana ("Registrant Releasing Parties"), do hereby release Settling Defendants, and each of their successors, assigns, agents, trusts, representatives, attorneys, heirs, executors, administrators, insurers, and each of them (collectively, the "Registrant Released Parties"), from any and all claims, demands, debts,

liabilities, losses, expenses, attorney fees, obligations, accounts, and causes of action of every kind and nature whatsoever, in law, equity, or otherwise, which Registrant Releasing Parties had, or now have, against the Registrant Released Parties, so that on and after the Effective Date hereof, the Registrant Releasing Party shall have no claim of any kind or nature arising from the subject Action on or against the Registrant Released Parties on or by reason of any matter, cause, action, transaction or thing whatsoever, done, said or omitted to be done which arises from the subject Action, and TTAB Proceedings.

Exclusion to Section 1(A): The foregoing release expressly excludes any claim, in law or in equity, which may accrue to Registrant against Settling Defendants arising out of Settling Defendants' breach of the terms of this Agreement, including, but not limited to, the continued use of the name/mark, "Santana", the Santana Marks, or any other confusingly similar mark by Settling Defendants or on their behalf, in any manner not expressly permitted by this Agreement.

(b) Release by Settling Defendants: Except for any rights and obligations created by this Agreement, Settling Defendants (collectively, the "Settling Defendants Releasing Parties"), do hereby for themselves absolutely and forever release Registrant, Santana's Grill, Inc., Claudia Vallarta Santana and Abelardo Santana Lee, and each of their successors, assigns, agents, affiliates, licensees, trusts, representatives, attorneys, heirs, executors, administrators, insurers, and each of them (collectively, the "Settling Defendants Released Parties"), from any and all claims, demands, debts, liabilities, losses, expenses, fees, obligations, accounts, and causes of action of every kind and nature whatsoever, in law, equity, or otherwise, which Settling Defendants Releasing Parties had, or now have, against the Settling Defendants Released Parties, so that on and after the Effective Date hereof, Settling Defendants Releasing Parties shall have no claim of any kind or nature arising out of the subject Action on or against the Settling Defendants Released Parties on or by reason of any matter, cause, action, transaction or thing whatsoever, done, said or omitted to be done which arises out of the subject Action and/or the TTAB Proceedings.

(c) Waiver of Civil Code Section 1542:

The Agreeing Parties acknowledge and understand that there is a risk that now or subsequent to the execution of this agreement, they may have claims arising out of or related to the Action and TTAB Proceedings set forth above which are unknown and unanticipated at the time this agreement is signed, and that any claims as are known or should be known may become more serious than they now expect or anticipate. Other than the obligations and exclusions referenced herein, THE AGREEING PARTIES HEREBY EXPRESSLY WAIVE ALL RIGHTS they may have in such unknown and unexpected consequences or results. The Agreeing Parties understand California Civil Code section 1542 and expressly waive its provisions. California Civil Code section 1542 provides, as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Except as otherwise provided by this Agreement, the Settling Parties hereto voluntarily, and with full knowledge of its significance, waive and relinquish any and all rights that they have under Section 1542 as well as under the provisions of all comparable, equivalent or similar statutes and principles of common law or other decisional law of any and all states of the United States and of the United States as to the claims as set forth in the Action as relates to the Subject Properties.

It is expressly understood and agreed that this waiver of Civil Code Section 1542 and the mutual release set forth in paragraph 1 hereto are material terms of this Agreement and were separately negotiated between the Settling Parties hereto.

2. Continued Use Agreement:

a. Each of the Settling Defendants agree that it will only use the name, "SANTANA" solely in conjunction with the name/mark, "BURRITO SANTANA" in singular form, and only in connection with Mexican restaurant food services (collectively, the "Services"), and for no other products, goods, or services, except as may be expressly provided elsewhere in this Agreement. Other than the name, "BURRITO SANTANA", Settling Defendants will not use or register any other mark containing the mark/name "SANTANA" or any spelling or phonetic variant of SANTANA. In addition, in recognition of the fact that Registrant uses many marks that contain SANTANA, Settling Defendants will not use SANTANA in close proximity to any other mark such that it might appear to a consumer that Settling Defendants are using the SANTANA name/mark outside and apart from the name, "BURRITO SANTANA." The intent of this provision is that Settling Defendants shall not use the name Santana, the Santana Marks or any name/mark confusingly similar thereto on any goods or services, other than the name "BURRITO SANTANA."

b. Settling Defendants agree that they will not object to, contest, oppose or interfere with, directly or indirectly, Registrant's Registrations identified above nor as to Registrant's use of the Santana name and Santana Marks ® for Mexican restaurant services/goods.

c. For so long as Settling Defendants are in compliance with the terms of this Agreement, Registrant will not object to, contest, oppose or interfere with Settling Defendants use of the name/mark, "BURRITO SANTANA" in the singular form, as permitted under this Agreement.

d. Except as permitted by this Agreement, Settling Defendants shall immediately cease and desist continued use of, manufacture, distribution, marketing, advertising, and sale of the name "Santana" and the Santana Marks®, or any confusingly similar mark. Notwithstanding the foregoing sentence, Settling Defendants shall change and phase out all use of and sale of any and all names/marks utilizing or containing the mark "SANTANA", except for the name, "BURRITO SANTANA" by no later than **March 30, 2007**. The intent of this provision is to provide Settling Defendants with sufficient time to change all signage, menus, advertising, legal documents, and similar restaurant related items containing the Santana name or Santana Marks, or using any similarly confusing name/mark, except for the name, "BURRITO SANTANA."

e. Settling Defendants shall immediately cease and desist continued use of (in any fashion), manufacture, distribution, marketing, advertising, and sale of the Registrant's restaurant logo which is the subject of U.S. Registration No. 2,682,978 for SANTANA'S MEXICAN FOOD and design,® or any variation thereof (See Exhibit "B" attached hereto and incorporated by reference herein), or any design/logo that is confusingly similar to Registrant's restaurant logo. Notwithstanding the foregoing sentence, Settling Defendants shall change and phase out all use of and sale of Registrant's restaurant logo or variations thereof, and any logo/designs that are confusingly similar to Registrant's restaurant logo or variations thereof by no later than **March 30, 2007**. The intent of this provision is to provide Settling Defendants with sufficient time to change all signage, menus, advertising, and similar restaurant related items containing Registrant's restaurant logo or any similar variations thereof.

f. As set forth in this Agreement, Settling Defendants may, in connection with Mexican restaurant services, use the name/mark "BURRITO SANTANA" in the singular form, only. Settling Defendants agree that they will not use the name "SANTANA," or "SANTANA'S" separate and apart from the name "BURRITO SANTANA."

g. Settling Defendants shall always use, and ensure that they and any licensees and all distributors use the name "BURRITO SANTANA" in a manner consistent with proper trademark usage and in accordance with this Agreement.

h. Quality Standards: Registrant is concerned that the SANTANA name, even when used in conjunction with the name "BURRITO SANTANA", represent goods of high quality, even if used in a manner that does not create a likelihood of confusion, so as to avoid any tarnishment of the name, SANTANA in connection with Mexican restaurant food services. Accordingly, Settling Defendants agree to maintain at least that standard of quality maintained by Settling Defendants for the restaurant services as of the Effective Date of this Agreement as the overall standard of quality for restaurant services provided/sold under or in connection with the "BURRITO SANTANA" name.

i. Settling Defendants will take all necessary and reasonable steps to avoid and eliminate any instance of confusion with Registrant's Santana Marks, or its Santana mark/name used in connection with Mexican restaurant food services, if such instance comes to the attention of the Settling Defendants.

j. Termination. In the event Settling Defendants commit a breach of any of the obligations under this Section 2 of this Agreement, Registrant may provide written notice to Settling Defendants, and Settling Defendants shall cure such breach within ninety (90) days of the date of the written notice. If Settling Defendants fail to cure the breach within the ninety (90) day cure period, Registrant may terminate the consent provided under Section 2 of this Agreement by delivery of written notice to Settling Defendants. Upon termination of the consent provided under Section 2, Settling Defendants shall immediately stop all use of the mark/name SANTANA, in the singular or plural form. Written notice of any breach will be addressed to _____ for all Settling Defendants.

k. Settling Defendants recognize that Registrant's use of the Santana Marks® and the name Santana, in its singular or plural form, or any variations thereof for its Mexican

restaurant services and on its products are distinctive in the mind of the public. Settling Defendants agree that they will not during the term of this Agreement, or thereafter, attack title or any rights of Registrant in and to the Santana Marks/Registrations in connection with its Mexican food restaurants, including the Santana Marks which are the subject matter of 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 and design, and U.S. Registration No. 2,634,976 for SANTANA'S MEXICAN GRILL, or any SANTANA containing trademark used by Registrant, except for "BURRITO SANTANA."

l. Settling Defendants shall not take any action, that would infringe upon, harm or contest the proprietary of Registrant in and to the Santana's Marks®, or any variation thereof.

m. Settling Defendant, Santana's Mexican Grill, Inc., by and through its owner, Arturo Santana Lee, shall change its Articles of Incorporation and shall terminate use of the name "Santana's Mexican Grill, Inc. The name change shall be consistent and in compliance with this Agreement.

n. Settling Defendants shall immediately change and cease and desist use of any fictitious business name statements bearing the Santana Marks® or confusingly similar marks containing the "Santana" name, in the singular or plural form. However, Settling Defendants may use and apply for fictitious business name statement(s) for "Burrito Santana."

o. No Waiver. Section 2 may not be waived or modified except by a written agreement signed by Registrant or its successors, and Settling Defendants or its successors. The failure of Registrant to enforce, or the delay by Registrant in enforcing any of its rights under this Agreement shall not be deemed as a continuing waiver or a modification thereof and Registrant may, within the time provided by applicable law, commence appropriate legal proceedings to enforce any or all of such rights.

p. Settling Defendant, Arturo Santana Lee, is permitted to disclose, at that restaurants he controls/owns, that he is the son of Arturo Santana Gallego, the founder of the first Mexican restaurant in San Diego County named "Santana's Mexican Food, which was founded in or around 1987. However, the statement shall not reference Registrant's restaurants (except as to the Point Loma restaurant), and shall not be used in a manner that could likely cause customer confusion between Settling Defendants' restaurants and Registrant's restaurants, now existing or in the future. If statement references Registrant's Point Loma restaurant, the statement shall contain language that Registrant's Point Loma Restaurant has no affiliation with Arturo Santana Lee's restaurants. The statement and the manner in which it is used shall be subject to Registrant's approval, which approval/denial will not be unreasonably withheld or delayed. Any disagreement as to the manner and terms in which the statement is used and/or the wording of the statement shall be referred first to mediation upon 60 days written demand, and if a resolution does not occur, be the subject of binding arbitration pursuant to California law and the laws of the United States.

q. **Advertising and Marketing.** Settling Defendants shall cease and desist use of the Santana name and Santana Marks, except as to the name "Burrito Santana", in any advertising

and marketing. Settling Defendants shall not use the "Burrito Santana" name in any manner that might materially diminish and/or tarnish the image and/or reputation, if any, of that name/mark.

r. **Trade Dress.** Settling Defendants shall cease and desist use of any trade dress symbol, or design, including the saw tooth (triangular) design or variations thereof as identified on Registrant's restaurant logo (see Exhibit B) or any trade dress that is/are confusingly similar to Registrant's restaurants and its logo and designs.

3. **Good Faith Approved by Agreeing Parties:** All Agreeing Parties agree that the instant settlement which is the subject matter of this Agreement is made in good faith pursuant to the provisions of Code of Civil Procedure section 877.6 and other applicable Federal and California authority.

4. **Covenants/Promises/Consideration:** In further consideration for the foregoing, including the mutual releases provided above and the promises and covenants set forth in this Agreement, the Agreeing Parties agree as follows:

a. **Payment:** Registrant shall pay, jointly, the lump sum total of sixty thousand dollars (\$60,000.00) to Settling Defendants to be received by Settling Defendants' counsel of record, Cris Armenta of The Armenta Law Firm, no later than **April 10, 2007, or 10 days after the Settling Defendants are in compliance with Section 2 and 4 of this Agreement, which ever occurs first.** The payment of \$60,000.00 ("Payment") shall be made payable to " _____", tax I.D. No. _____; at _____.

In the event Registrant does not timely make the Payment by the due date set forth in paragraph 4a. above, interest will start accruing at 10% per annum, unless the Agreeing Parties agree otherwise in writing.

b. **Representation:** Settling Defendants warrant and represent that they will change all signage, and other restaurant related items and materials bearing the name/mark "Santana," in the singular or plural form, or the Santana Marks, including without limitation, Santana's Mexican Food and/or Santana's Mexican Grill, or any variation thereof, except for the name "Burrito Santana."

c. **Cease/Desist Use of Mark:** Settling Defendants agree not to use, produce, manufacture, market, or otherwise place into interstate or intrastate commerce or anywhere within the world, any service or product using the name and/or mark "SANTANA" in the singular or plural form, the Santana Marks®, or any other confusingly similar mark, without the express written consent of Registrant. The only express exception being the consent to use the name "Burrito Santana."

e. **Change to Logo:** As set forth above, and except as permitted by this Agreement, Settling Defendants agree to cease and desist use of the Registrant's restaurant logo or any variation thereof (see Exhibit B), to one that looks significantly different from the Registrant logo and used by Registrant, including change of font style. The new logo shall be subject to Registrant's approval, which approval will not be unreasonably withheld or delayed.

f. Settling Defendants agree that they will not file or cause to be filed or otherwise acquire rights in any trademark application or registration anywhere in the world for any mark containing SANTANA any other confusingly similar mark, except as provided in this Agreement.

g. **Confidential:** The monetary dollar amount of this settlement shall not be disclosed to anyone by Settling Defendants without specific, prior written consent from the Registrant, except as necessary to Settling Defendants to their lawyers, insurers, accountants, government, and financial consultants for tax purposes, or as otherwise required by law/Court Order. However, Registrant shall have the sole discretion to disclose the monetary dollar amount to third parties.

i. **Cost/Fees:** Each party to this Agreement, Action and TTAB Proceedings are to bear their own costs and attorneys' fees and other expenses arising out of the Action and TTAB Proceedings;

j. **Signatures:** Settling Defendants shall sign/execute this Agreement by November ____, 2006, and shall send their signatures to this Agreement via facsimile to Registrant's counsel, Bremer Whyte Brown & O'Meara LLP attention Michael Sandstrum, Esq. at (949) 221-1001 by November ____, 2006 (close of business) and shall mail the original signatures to this Agreement to Registrant's counsel, Bremer Whyte Brown & O'Meara LLP attention Michael Sandstrum, Esq., at 20320 S.W. Birch Street, 2nd Floor, Newport Beach, CA 92660 by November ____, 2006. Registrant, Santana's Grill, Inc. and Claudia Vallarta Santana, shall forward their signatures to this Agreement via U.S. mail, to the attention of Cris Armenta, The Armenta Law Offices, 233 Wilshire Blvd, Suite 400, Santa Monica, CA 90401 counsel for Settling Defendants, within 5 business days after receipt of Settling Defendants' original signatures to this Agreement.

k. **Dismissal of Action:** In exchange for the covenants, agreements, promises and consideration as set forth in this Agreement, Registrant, Santana's Grill, Inc. and Claudia Vallarta Santana, and each of the Settling Defendants agree to dismiss their respective complaints and counterclaims and claims asserted in the Action and TTAB Proceedings against one another with prejudice. The dismissals shall be filed within 10 days of receipt of the original signatures of all Agreeing Parties to this Agreement by Registrant's counsel of record. If Settling Defendants breach the terms of this Agreement, the dismissal of Registrant's Complaint in the Action shall then be deemed to be without prejudice.

WARRANTIES AND ACKNOWLEDGMENTS

5. **Legal Holder:** This Agreement is a compromise between and amongst the parties hereto for the complete and final settlement of all claims, disputes and differences existing as of the date this Agreement is signed, and is made in consideration of the mutual promises set forth herein, except as otherwise provided for in this Agreement. Liability is expressly denied. The Parties hereby warrant and represent that they each own and hold title to claims that were asserted against the other in the Action and TTAB Proceedings, and that they each have the right to dismiss and release those claims, and they have not heretofore assigned, transferred or

conveyed, or purported to assign, transfer or convey to anyone any claim, demand, debt, liability, account, obligation, or cause of action herein released.

6. **Beneficiaries:** Except as otherwise specifically provided in this Agreement, no persons or entities other than the Agreeing Parties are intended to be or should be construed to be a beneficiary of any of the provisions of this Agreement.

7. **Enforceability/Jurisdiction:** The Agreeing Parties do hereby agree that each has the right to enforce this Agreement, or any provision thereof, by filing any appropriate motion or proceeding or action, including, without limitation, a motion pursuant to applicable law in the U.S. District Court, Southern District of California, where the Action is venued. The Agreeing Parties further agree, acknowledge and stipulate that the Court in the Action shall retain jurisdiction over the Agreeing Parties to determine any motion or proceeding brought pursuant to this Agreement, including, without limitation, the enforcement thereof. It is stipulated between the Agreeing Parties that the U.S. District Court, Southern District of California shall have jurisdiction and shall be the place of venue in any matter arising out of Settling Defendants' breach of this Agreement or the enforcement thereof.

8. **Investigation:** The Agreeing Parties hereto have thoroughly investigated the facts relating to the aforementioned dispute. The parties hereto warrant that they freely entered into this Agreement and are not entering into this Agreement because of any duress or fear and are fully authorized to enter into the terms and conditions set forth herein, to execute the Agreement, and to legally bind the parties. The Agreeing Parties hereto further warrant that they have read this Agreement, have consulted with their attorneys, or have had the reasonable opportunity to consult with an attorney, and understand and agree to the provisions herein.

9. **Reliance:** The Agreeing Parties hereto have not relied upon any statement or representation by any party hereto or any agent, employee, representative or attorney for any party hereto regarding any facts relied upon in entering into this Agreement, except for the representations made herein.

10. **Neutral Interpretation:** This Agreement and the documents and instruments executed in connection with this Agreement constitute the product of negotiations of the Agreeing Parties, and the enforcement hereof shall be interpreted in a neutral manner and not more strongly for or against any party based upon the source of the draftsmanship hereof.

11. **Integration Clause:** Except as otherwise provided herein, this Agreement constitutes the entire agreement pertaining to the subject matter hereof and fully supersedes any and all prior understandings, representations, warranties, and agreements between the parties, or any of them, pertaining to the subject matter hereof, and, except as expressly contained herein or the Consent Judgment decree, may be modified only by written agreement signed by the parties hereto.

12. **Authorization:** Each party signing this Agreement and any documents executed in connection with this Agreement, whether signed individually or on behalf of any person or entity, warrants and represents that he has full authority to execute it on behalf of the party on whose behalf he so signs. Each separately acknowledges and represents that the representations and warranties contained herein are an essential and material provision of this Agreement and

shall survive execution of this Agreement. Each party agrees to perform any further acts, and to execute and deliver such documents as are reasonably necessary or appropriate to fully implement the provisions of this Agreement.

13. **Attorneys' Fees:** In the event that any party hereto should bring any action, suit or other proceeding against any other party hereto, on any claim, demand, debt, liability, obligation, account or cause of action herein discharged and released, or contesting the validity of this Agreement, or attempting to enforce, remedy, prevent or obtain relief from any breach of this Agreement, the prevailing party shall recover all of such party's reasonable attorneys' fees and costs incurred in such action.

14. **Successors and Assigns:** This Agreement shall be binding upon and inure to the benefit of each of the parties, their respective assigns, successors in interest and legal representatives.

15. **Controlling Law:** This Agreement is made and entered into within the United States of America, and specifically, in the State of California and shall in all respects be interpreted and enforced and governed by and under the laws of the United States and California.

16. **Headings and Pronouns:** The headings in this Agreement are for convenience only and shall not affect, govern or control the construction hereof. Masculine or feminine pronouns shall be substituted for the neuter forms, and feminine pronouns shall be substituted for the masculine, and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution.

17. **Fees & Costs:** All Agreeing Parties to this Agreement shall bear their own costs, expenses, and attorneys' fees incurred in the Action and TTAB Proceedings.

18. **Severability:** If any provision of this Agreement is found to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provisions shall be fully severable, provided that parties retain the material benefits of the Agreement. This Agreement shall be construed and enforced as if such illegal, invalid, or enforceable provision never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provisions or by severance from this Agreement.

19. **Counterparts:** This Agreement shall be effective only after all parties have signed same in the spaces provided. This Agreement may be executed in multiple counterpart copies, each of which shall be deemed an original. Facsimile signatures may serve as an original. The terms of this Agreement are contractual and not a mere recital.

///

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///

///

20. **Translation:** The Settling Defendants warrant, represent and acknowledge that document attachment to this Agreement as Exhibit "A" is a true and correct translation of this Agreement, from English to Spanish, and each Settling Defendant agrees to the terms of this Agreement.

CAUTION: READ THIS ENTIRE DOCUMENT BEFORE SIGNING BELOW.

Dated: _____

SANTANA'S GRILL, INC.

By: _____

Title: _____
[authorized representative]

Dated: _____

CLAUDIA VALLARTA SANTANA

By: _____

Dated: _____

ARTURO SANTANA GALLEGO

By: _____

Dated: _____

ARTURO SANTANA LEE

By: _____

Dated: _____

SANTANA'S MEXICAN GRILL, INC.

By: _____

///

CAUTION: READ THIS ENTIRE DOCUMENT BEFORE SIGNING BELOW.

Dated: _____

PEDRO SANTANA LEE dba BURRITO
SANTANA

By: _____

Dated: _____

ARTURO CASTANEDA

By: _____

EXHIBIT "J"

Mike Sandstrum

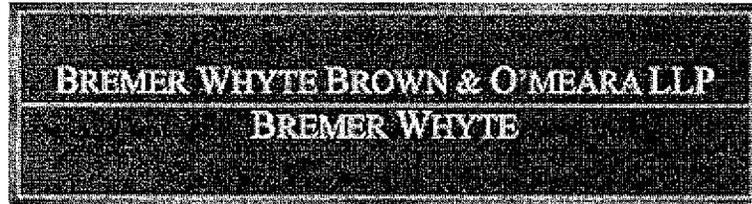
From: Mike Sandstrum
Sent: Monday, November 06, 2006 10:27 AM
To: 'Cris Armenta'
Subject: Status - Santana's Grill, Inc. v. Arturo Santana Lee et. al. & TTAB Proceedings: Our File No. 1174.272

Importance: High

As previously discussed, we need to get this matter finalized asap, my clients' business is unfortunately being impacted, and as such, we need to get the agreement fully executed by the end of this week. I know that you are busy, but please call me to discuss. I am in the office until 2:30-3:00 p.m. today.

Thanks,

Michael Sandstrum, Esq.
Partner
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 fax



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Thank you.

12/5/2006

Mike Sandstrum

From: Mike Sandstrum [msandstrum@bremerandwhyte.com]
Sent: Tuesday, November 07, 2006 4:39 PM
To: 'Cris Armenta'
Subject: RE: Price quote Settlement Agreement

What is the status regarding your clients' signatures? We need to fill in the Notice contact information in the agreement.

Thanks

From: Cris Armenta [mailto:cris@crisarmenta.com]
Sent: Monday, November 06, 2006 8:24 PM
To: 'Mike Sandstrum'
Subject: FW: Price quote Settlement Agreement

M. Cris Armenta
The Armenta Law Firm, A.P.C.
233 Wilshire Boulevard
Suite 400
Santa Monica, California 90401
Tel: (310) 917-1026
Fax: (310) 917-1027
www.crisarmenta.com

12/5/2006

EXHIBIT "K"

Mike Sandstrum

From: Mike Sandstrum
Sent: Monday, November 13, 2006 1:15 PM
To: 'Cris Armenta'
Subject: Status - Santana's Grill v. Arturo Santana Lee et. al. & TTAB Proceedings: Our File No. 1174.272

Importance: High

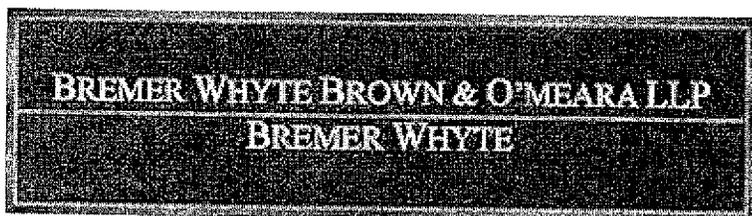
Dear Cris:

Please let me know the status of obtaining your client signatures to the settlement agreement. Although I trust that you are using your best efforts, it has been over six weeks since the tentative settlement was in place. Consequently, my client's business/plans are being impacted. As such, please forward your client signatures to the Agreement by **THIS WEDNESDAY NOV 15TH, 2006 @ 5:00 PM** the end of this week, close of business. If all signatures are not timely forthcoming, \$5,000.00 will be deducted from the total payment of \$60,000.00 (monies to reimburse for the name change) for every week that the agreement goes unsigned. We will also need to begin my client's testimonial period in December, if we do not receive all of your client signatures.

If you have any questions, please let me know.

Thanks,

Michael Sandstrum, Esq.
Partner
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 fax



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12/5/2006

Mike Sandstrum

From: Mike Sandstrum
Sent: Tuesday, November 14, 2006 3:42 PM
To: 'Cris Armenta'
Subject: Status Settlement Agreement - Santana's Grill, Inc. v. Arturo Santana Lee et. al. & TTAB Proceedings; Our File No. 1174.282

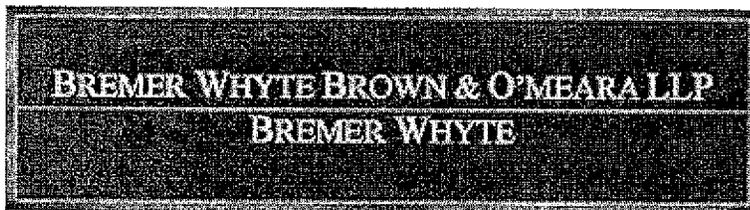
Importance: High

At your earliest convenience, please advise as to the status of forwarding your clients' signatures to the Agreement and Translated Agreement. As you know, we have requested receipt of your clients' signatures by tomorrow, Wednesday, November 15, 2006.

If you have any questions, please let me know.

Thanks

Michael Sandstrum, Esq.
Partner
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 fax



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Thank you.

12/5/2006

EXHIBIT "L"

Mike Sandstrum

From: Cris Armenta [cris@crisarmenta.com]
Sent: Tuesday, November 14, 2006 3:40 PM
To: 'Mike Sandstrum'
Subject: RE: Status - Santana's Grill v. Arturo Santana Lee et. al. & TTAB Proceedings: Our File No. 1174.272
Follow Up Flag: Follow up
Flag Status: Completed

Dear Mike:

Why don't you extend your deadline until Monday? I am still waiting on the translation, but should have signatures for you by Friday, to be fedex to you for Monday delivery.

From: Mike Sandstrum [mailto:msandstrum@bremerandwhyte.com]
Sent: Monday, November 13, 2006 1:15 PM
To: Cris Armenta
Subject: Status - Santana's Grill v. Arturo Santana Lee et. al. & TTAB Proceedings: Our File No. 1174.272
Importance: High

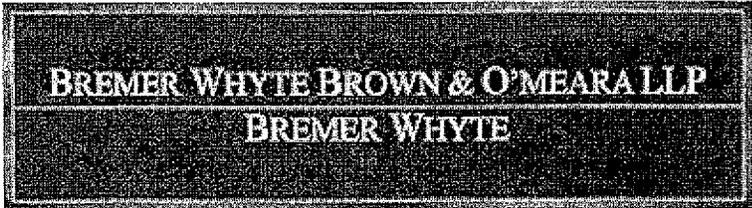
Dear Cris:

Please let me know the status of obtaining your client signatures to the settlement agreement. Although I trust that you are using your best efforts, it has been over six weeks since the tentative settlement was in place. Consequently, my client's business/plans are being impacted. As such, please forward your client signatures to the Agreement by THIS WEDNESDAY NOV 15TH, 2006 @ 5:00 PM the end of this week, close of business. If all signatures are not timely forthcoming, \$5,000.00 will be deducted from the total payment of \$60,000.00 (monies to reimburse for the name change) for every week that the agreement goes unsigned. We will also need to begin my client's testimonial period in December, if we do not receive all of your client signatures.

If you have any questions, please let me know.

Thanks,

Michael Sandstrum, Esq.
Partner
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 fax



BREMER WHYTE BROWN & O'MEARA LLP
BREMER WHYTE

12/5/2006

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Thank you.

12/5/2006

Mike Sandstrum

From: Mike Sandstrum [msandstrum@bremerandwhyte.com]
Sent: Tuesday, November 14, 2006 4:40 PM
To: 'Cris Armenta'
Subject: RE: Status - Santana's Grill v. Arturo Santana Lee et. al. & TTAB Proceedings: Our File No. 1174.272

I will discuss the request with my clients and get back to you.

Thanks

From: Cris Armenta [mailto:cris@crisarmenta.com]
Sent: Tuesday, November 14, 2006 3:40 PM
To: 'Mike Sandstrum'
Subject: RE: Status - Santana's Grill v. Arturo Santana Lee et. al. & TTAB Proceedings: Our File No. 1174.272

Dear Mike:

Why don't you extend your deadline until Monday? I am still waiting on the translation, but should have signatures for you by Friday, to be fedex to you for Monday delivery.

From: Mike Sandstrum [mailto:msandstrum@bremerandwhyte.com]
Sent: Monday, November 13, 2006 1:15 PM
To: Cris Armenta
Subject: Status - Santana's Grill v. Arturo Santana Lee et. al. & TTAB Proceedings: Our File No. 1174.272
Importance: High

Dear Cris:

Please let me know the status of obtaining your client signatures to the settlement agreement. Although I trust that you are using your best efforts, it has been over six weeks since the tentative settlement was in place. Consequently, my client's business/plans are being impacted. As such, please forward your client signatures to the Agreement by THIS WEDNESDAY NOV 15TH, 2006 @ 5:00 PM the end of this week, close of business. If all signatures are not timely forthcoming, \$5,000.00 will be deducted from the total payment of \$60,000.00 (monies to reimburse for the name change) for every week that the agreement goes unsigned. We will also need to begin my client's testimonial period in December, if we do not receive all of your client signatures.

If you have any questions, please let me know.

Thanks,

Michael Sandstrum, Esq.
Partner
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 fax

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BREMER WHYTE

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Thank you.

12/5/2006

Mike Sandstrum

From: Mike Sandstrum
Sent: Friday, November 17, 2006 11:11 AM
To: 'Cris Armenta'
Cc: Maria Starn
Subject: Status Agreement -- Santana's Grill, Inc. v. Arturo Santana Lee et.al. & TTAB Proceedings; Our File No. 1174.272

Importance: High

Tracking:

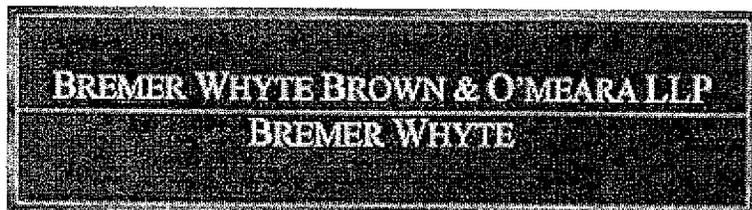
Recipient	Read
'Cris Armenta'	
Maria Starn	Read: 11/17/2006 11:16 AM
'CLAUDIA V. SANTANA'	

Dear Cris:

I have not heard back from my clients regarding their position with respect to the Wednesday deadline. That said, I would request confirmation that the signatures to the Agreement and the Translated Agreement were or are to be sent today to my attention. I would like to receive the faxed or pdf signatures today and receive the originals in the mail asap. Please provide me with the status.

Thanks

Michael Sandstrum, Esq.
Partner
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 fax



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12/5/2006

Thank you.

12/5/2006

EXHIBIT "M"

Mike Sandstrum

From: Cris Armenta [cris@crisarmenta.com]
Sent: Friday, November 17, 2006 12:15 PM
To: 'Mike Sandstrum'
Cc: 'Maria Starn'
Subject: RE: Status Agreement -- Santana's Grill, Inc. v. Arturo Santana Lee et.al. & TTAB Proceedings; Our File No. 1174.272

My clients signatures will be delivered by fax on Tuesday. I have received the translation today. Thanks!

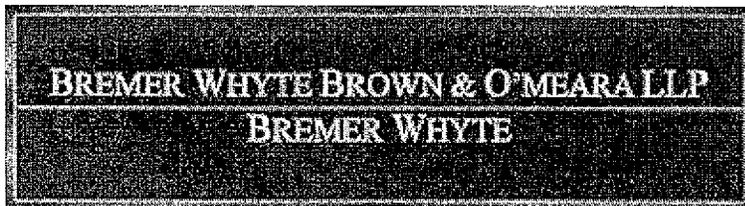
From: Mike Sandstrum [mailto:msandstrum@bremerandwhyte.com]
Sent: Friday, November 17, 2006 11:11 AM
To: Cris Armenta
Cc: Maria Starn
Subject: Status Agreement -- Santana's Grill, Inc. v. Arturo Santana Lee et.al. & TTAB Proceedings; Our File No. 1174.272
Importance: High

Dear Cris:

I have not heard back from my clients regarding their position with respect to the Wednesday deadline. That said, I would request confirmation that the signatures to the Agreement and the Translated Agreement were or are to be sent today to my attention. I would like to receive the faxed or pdf signatures today and receive the originals in the mail asap. Please provide me with the status.

Thanks

Michael Sandstrum, Esq.
Partner
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 fax



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received this transmission in error, please immediately notify us by reply e-mail, by forwarding this to postmaster@bremerandwhyte.com or by telephone at (949)221-1000; and delete the original transmission and its attachments without reading or saving in any manner.

Thank you.

12/5/2006

EXHIBIT "N"

Mike Sandstrum

From: Cris Armenta [cris@crisarmenta.com]
Sent: Monday, November 20, 2006 12:30 PM
To: 'Mike Sandstrum'
Subject: RE: Status Agreement – Santana's Grill, Inc. v. Arturo Santana Lee et.al. & TTAB Proceedings; Our File No. 1174.272

We should have signatures tomorrow.

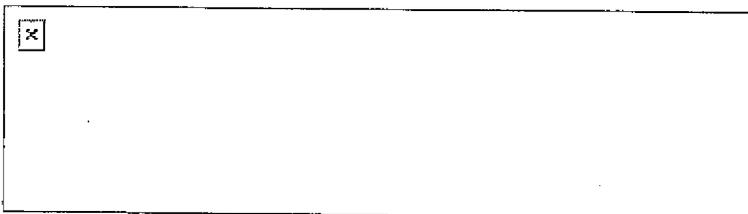
From: Mike Sandstrum [mailto:msandstrum@bremerandwhyte.com]
Sent: Friday, November 17, 2006 11:11 AM
To: Cris Armenta
Cc: Maria Starn
Subject: Status Agreement – Santana's Grill, Inc. v. Arturo Santana Lee et.al. & TTAB Proceedings; Our File No. 1174.272
Importance: High

Dear Cris:

I have not heard back from my clients regarding their position with respect to the Wednesday deadline. That said, I would request confirmation that the signatures to the Agreement and the Translated Agreement were or are to be sent today to my attention. I would like to receive the faxed or pdf signatures today and receive the originals in the mail asap. Please provide me with the status.

Thanks

Michael Sandstrum, Esq.
Partner
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
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attachments without reading or saving in any manner.

Thank you.

12/5/2006

EXHIBIT "O"

Mike Sandstrum

From: Mike Sandstrum [msandstrum@bremerandwhyte.com]
Sent: Wednesday, November 22, 2006 2:34 PM
To: 'Cris Armenta'
Subject: RE: Status

Importance: High

Please get the signatures to me today by 4:00 p.m. --- via email scan. I have yet to hear from my client regarding their position with respect to the any deduction they may implement for missing the deadline of last Wednesday. I am hopeful that if the signatures are here today, we can get this matter finalized.

Having said that, I also request that you mail the original signatures to my office along with the copy of the Agreement and Exhibit "A" the translated agreement with the proper certification re: translation.

If I do not hear from you, have a Happy Thanks Giving.

-----Original Message-----

From: Cris Armenta [mailto:cris@crisarmenta.com]
Sent: Wednesday, November 22, 2006 9:14 AM
To: msandstrum@bremerandwhyte.com
Subject: RE: Status

One of my clients was delayed returning from a trip from Mexico, but I am told that he will be back in San Diego today and I will receive all signatures today. As soon as I have them, I will send them to you via facsimile or email scan.

-----Original Message-----

From: msandstrum@bremerandwhyte.com [mailto:msandstrum@bremerandwhyte.com]
Sent: Tuesday, November 21, 2006 8:31 PM
To: Atty Cris Armenta
Subject: Status

I have not received your client signatures. Please advise if you faxed and mailed the signatures to my attention today. If not, I will have to speak with my clients regarding the how they want to proceed.

Thanks

Mike

Sent from my BlackBerry wireless handheld.

EXHIBIT "P"

Mike Sandstrum

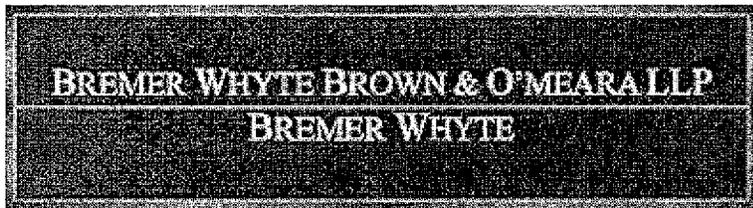
From: Mike Sandstrum
Sent: Tuesday, November 28, 2006 8:42 AM
To: 'Cris Armenta'
Subject: Did you send the signature? Santana's Grill v. Arturo Santana Lee et. al. & TTAB Proceedings: Our File No. 1174.272
Importance: High

I hope that you had a great Thanksgiving!!

Did you send your client signatures? I do not seem to have them. I need to contact my clients regarding this matter. Please advise.

Thanks

Michael Sandstrum, Esq.
Partner
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 fax



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Thank you.

12/5/2006

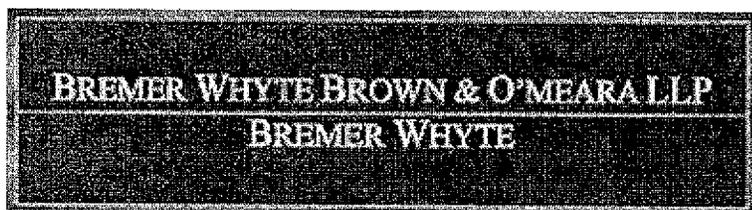
Mike Sandstrum

From: Mike Sandstrum
Sent: Tuesday, November 28, 2006 11:25 AM
To: 'Cris Armenta'
Subject: Status? -- Santana's Grill v. Arturo Santana Lee et. al.: Our File No. 1174.272
Importance: High

Please let me know the status re: signatures asap.

Thanks

Michael Sandstrum, Esq.
Partner
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
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Thank you.

12/5/2006

EXHIBIT "Q"

Mike Sandstrum

From: Mike Sandstrum
Sent: Wednesday, November 29, 2006 5:06 PM
To: 'Cris Armenta'
Subject: Status - Santana's Grill v. Arturo Santana Lee & TTAB Proceedings: Our File No. 1174.272
Importance: High

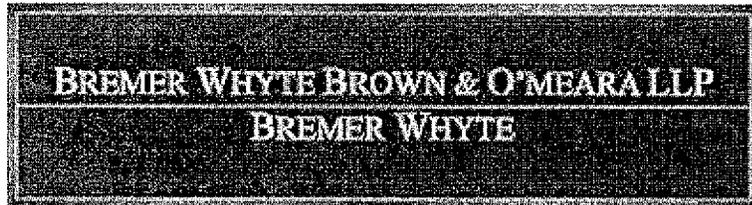
Dear Cris,

As I understand, there is a potential significant problem stemming from your end which may require you to withdraw as counsel of record with respect to the TTAB cancellation proceedings. Per our discussions, the scope and extent of the problem will not be disclosed as it may violate the attorney-client privilege. Having said that, on September 22, 2006, your clients' extended a global settlement offer, in lieu of taking testimony. Over eight weeks have since passed, and now a problem has arisen, which will not be disclosed. My clients are somewhat suspect as to why this potential problem has arisen months later. Since your clients extended the global settlement offer, our office has been diligently following up with your office regarding signatures. Throughout the eight week period, we were never informed of any potential pending problem impacting the proposed written global settlement/release agreement. Recall, signatures were promised sometime ago, and just last week they were (again) promised to be sent via Fed Ex latest Wednesday, November 22, 2006.

As my client's trial testimonial period has commenced (closes December 21st), please immediately advise the status of signatures/settlement so that appropriate action may be taken, including possibly filing a motion to dismiss pursuant to 37 CFR §2.132 (Involuntary dismissal for failure to take testimony).

Thanks,

Michael Sandstrum, Esq.
Partner
Bremer Whyte Brown & O'Meara, LLP
20320 S.W. Birch St. 2nd Floor
Newport Beach, CA 92660
(949) 221-1000
(949) 221-1001 fax



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12/5/2006

Thank you.

12/5/2006