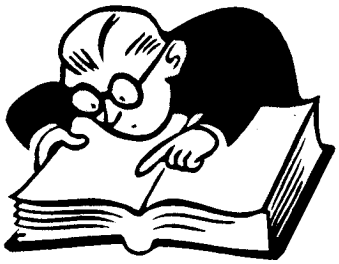

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ARTURO SANTANA GALLEGO, Petitioner, vs. SANTANA'S GRILL, INC. Registrant.	Cancellation Nos.: (Consolidated) 92043152 92043160 92043175 **PETITIONER'S TRIAL BRIEF**

07-15-2008

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I. PRELIMINARY STATEMENT

Petitioner Arturo Santana Gallego seeks cancellation of three trademarks:

- Reg. No. 2,631,448 – **SANTANA'S MEXICAN FOOD . . . ES MUY BUENO**
- Reg. No. 2,634,976 – **SANTANA'S MEXICAN GRILL**
- Reg. No. 2,682,978 – **SANTANA'S MEXICAN FOOD . . ES MUY BUENO /HOME OF FAMOUS CALIFORNIA BURRITO (and design)**

Petitioner Arturo Santana Gallego seeks cancellation on the grounds that he is the senior user to the mark **SANTANA'S MEXICAN FOOD . . . ES MUY BUENO**, and that he is the senior user to the mark **SANTANA'S** in Class 42.

Petitioner Arturo Santana Gallego is 75 years old. He established his first two Mexican food restaurants in the 1980's and used the name **SANTANA'S MEXICAN FOOD** in association with those restaurants by at least 1987. Both restaurants were located in Southern California. On was located in San Diego ("Point Loma" or "Rosecrans Restaurant"). The other was located in Riverside County in a city named Yucca Valley ("Yucca Valley Restaurant"). Mr. Santana Gallego began using **SANTANA'S MEXICAN FOOD . . ES MUY BUENO** in commerce in connection with his two Mexican food restaurants by 1987.

In the early 1990's, Mr. Santana Gallego gifted the Point Loma/Rosecrans Restaurant to the youngest of his four sons, Abelardo, and to Abelardo's wife, Claudia. Even so, Mr. Santana Gallego continued to operate the **SANTANA'S MEXICAN FOOD** in Yucca Valley.

Mr. Santana Gallego assisted his eldest son, Arturo Santana Lee, in opening another **SANTANA'S** restaurant in El Cajon, California. Arturo used the name **SANTANA'S MEXICAN GRILL** in commerce as early as 1997. Arturo filed a fictitious business name statement for **SANTANA'S MEXICAN GRILL** and

offered the same menu, used the same recipes and adopted the same colors and logos as at his father's and youngest brother's restaurant(s).

Abelardo and Claudia ran the Point Loma/Rosecrans Restaurant using the name **SANTANA'S MEXICAN FOOD**. In 1988, they formed a corporation **SANTANA'S GRILL, INC.** Abelardo and Claudia proceeded to open additional restaurants named either **SANTANA'S MEXICAN FOOD** or **SANTANA'S MEXICAN GRILL**

Mr. Santana Gallego proceeded to enter into a business relationship with a non-family member, Arturo Castaneda, by which Mr. Castaneda purchased the Yucca Valley Restaurant operations, building and a truck and Mr. Santana Gallego retained both reversionary rights in the restaurant and maintains control over existing and any future restaurant operations bearing the name **SANTANA'S MEXICAN FOOD**. Abelardo and Claudia did not want Mr. Santana to enter into a business relationship with a non-family member, but Mr. Santanna Gallego chose to do so in any event.

In 2001, Registrant Santana's Grill, Inc. applied for the three marks. Claudia Vallarta Santana signed declarations in connection with each. Claudia Vallarta Santana admits now that, contrary to her sworn declarations: (1) she knew that her father-in-law, Mr. Santana Gallego, continued to operate the Yucca Valley Restaurant bearing the name **SANTANA'S MEXICAN FOOD . . . ES MUY BUENO**; (2) she knew that her brother-in-law, Arturo Santana Lee, used the mark **SANTANA'S MEXICAN GRILL** before she, Abelardo or Registrant used it; (3) that Registrant could *not* have used any of the three marks as early as 1988 (the date she claimed) because Registrant was not even formed until ten years later, in 1998; and (4) that her father-in-law and her brother-in-law claimed rights superior to that of Registrant. Based on the evidence, Registrant's three registrations should be

cancelled on the basis that Claudia Vallarta Santana made knowingly false material statements to the PTO to obtain those registrations.

The three registrations should be cancelled because the evidence establishes that Mr. Santana Gallego is the senior user of the name **SANTANA's** in commerce in connection with Mexican food restaurants in the Southern California are, and used the mark **SANTANA'S MEXICAN FOOD . . ES MUY BUENO** before anyone. In addition, there exists confusion between the **SANTANA'S MEXICAN FOOD** brand established by Mr. Santana Gallego and the **SANTANA'S MEXICAN GRILL** established by Registrant. Finally, Registrant was not even the first user of the mark **SANTANA'S MEXICAN GRILL**, as both Abelardo and Claudia admit that the eldest Santana son, Arturo Santana Lee, used it in 1997, but Registrant did not begin to use it until the middle of 1998.

II. DESCRIPTION OF THE RECORD

Trial in this matter commenced on January 28, 2008 and concluded on April 4, 2008. Both sides took testimonial depositions and each side also filed a Notice of Reliance. The trial record consists of the following.

A. Testimonial Depositions

The following testimonial depositions were taken of the parties during the testimonial period established by the TTAB. Pursuant to Rule 8.103, the depositions are submitted both in paper form and electronically concurrent with this brief.[1]

1. Arturo Santana Gallego (January 30-31, 2008)

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[1] Every witness in this case testified during trial in Spanish, with the use of a court-certified interpreter. As a result, the parties stipulated to dispense with the notarization and signature requirement (unless counsel noticed discrepancies in the testimony or interpretations) because the Spanish-speaking only witnesses would have required yet *another* interpreter simply to read the transcript of proceedings.

2. Arturo Santana Lee (January 30, 2008)

3. Arturo Castaneda (January 31, 2008)

4. Claudia Vallarta (January 28, 2008)

5. Abelardo Santana (January 29, 2008)

6. Abelardo Santana (April 3, 2008)

7. Maite Agahnia (April 3, 2008)

8. Claudia Vallarta (April 4, 2008)

9. Benito Santana Lee (April 4, 2008)

B. Petitioner's Notice of Reliance

Petitioner timely submitted its Notice of Reliance on January 31, 2008, both on paper and electronically. The Petitioner's Notice of Reliance is referred to throughout this brief as "Pet. NOR."

C. Respondent's Notice of Reliance

Registrant timely submitted its Notice of Reliance on April 15, 2008. Registrant's Notice of Reliance is referred to throughout this brief as "Reg. NOR."

II. STATEMENT OF THE ISSUES

A. Did Registrant Commit Fraud on the PTO When It Sought Registration of 2,631,458 for SANTANA'S MEXICAN FOOD . . . ES MUY BUENO?

B. Did Registrant Commit Fraud on the PTO When It Sought Registration of 2,634,976 for SANTANA'S MEXICAN GRILL?

C. Did Registrant Commit Fraud on the PTO When It Sought Registration of 2,682,978 for SANTANA'S MEXICAN FOOD . . ES MUY BUENO/HOME OF FAMOUS CALIFORNIA BURRITO?

D. Is Mr. Santana Gallego the Senior User of SANTANA'S MEXICAN FOOD . . ES MUY BUENO?

E. Is Arturo Santana Gallego the Senior user of SANTANA'S MEXICAN GRILL?

F. Is There a Likelihood of Confusion Between SANTANA'S MEXICAN FOOD and SANTANA'S MEXICAN GRILL?

III. STATEMENT OF THE EVIDENCE AT TRIAL

A. The Original Two Santana's Mexican Food Restaurants

Now 75 years old, Petitioner Arturo Santana Gallego opened two Mexican food restaurants in 1979 called "Alberto's Mexican Food." (ASG 4:18; 5:25-6:2; 6:7-8.) One was located on Rosecrans in the Point Loma area of San Diego and is referred to by the parties as "Point Loma Restaurant" or "Rosecrans Restaurant." The other was located in Riverside County, approximately five hours away from San Diego, in Yucca Valley and is called by the parties and throughout this brief as "Yucca Valley Restaurant."

Mr. Santana Gallego does not speak English well and cannot read in English. (ASG 28:19-24.) In the early years, Mr. Santana Gallego changed the name of the restaurants to "Corona's Mexican Food." (ASG 6:9-7:2.) The Corona beer company asked Mr. Santana Gallego to remove the name "Corona's" from the restaurants and he immediately complied, changing the name of both restaurants to **SANTANA'S MEXICAN FOOD**. (ASG 7:1-14; see also Arturo SL 6:2-24 ("both of them had the name of Corona, and both of them had to change to Santana's"); Arturo SL 7:11-17 (name change happened "very fast" and "at the same time"); Benito SL 9:16-20 ("it was almost simultaneously").) Mr. Santana Gallego's best recollection is that this change, from "Corona's" to **SANTANA'S MEXICAN FOOD** occurred around 1987. (ASG 7:17-24.) While Mr. Santana was not completely certain about the year of the change, he was certain that the name at *both* restaurants was changed *practically at the same time.* (ASG 8:19-22; ASG 88:9; ASG 88:9-17 (names were changed "at the same time, the same thing"); ASG 89:4-7 ("at the same time").)

The Pacific Bell Smart Yellow Pages for San Diego for March 1988 contains a directory listing for Alberto's Mexican Food. (Pet. NOR Tab 8, PL0447-449.) The Everything Pages for the Morongo Basin, which covers Yucca Valley, for July 1988 contains a directory listing for the Yucca Valley Restaurant as **SANTANA'S**

MEXICAN FOOD. (Pet's NOR Tab 12, PL00458-459.)

B. Mr. Santana Developed the Name "Santana's Mexican Food," The California Burrito and the Crude Logo Initially Associated With the Restaurant

After naming both restaurants "Santana's Mexican Food," Mr. Santana Gallego purchased radio advertising for the restaurant, including a jingle that contained the words **ES MUY BUENO.** (ASG 9:20-10:6.) The jingle on the announcement said both **SANTANA'S MEXICAN FOOD** and **ES MUY BUENO** (Arturo SL 18:3-9.) This jingle was the origin of the phrase **ES MUY BUENO.** (Arturo SL 18:7-9; Arturo SL 108:21-109:1.) The radio announcement was broadcast around 1989. (Arturo SL 18:19-23.)

During the time that the restaurants bore the name **SANTANA'S MEXICAN FOOD**, Mr. Santana first made a burrito known as the "California Burrito." (ASG 11:22-12:10; ASG 80:11-24.) Mr. Santana Gallego explained its origin:

> Look the food was very expensive. We really didn't make enough in order to buy meat, so I remembered that my mother used to make taquitos with potatoes and meat. That's what the California is. That's why I invented it and we made it there.

(ASG 12:6-10.) Mr. Santana Gallego testified that the "California Burrito" was first made at the Yucca Valley Restaurant. (ASG 11:25-12:1.)

Mr. Santana Gallego also explained that the orange and blue triangles associated with the name **SANTANA'S MEXICAN FOOD** were created at the Yucca Valley Restaurant by one of his sons, Benito. (ASG 48:5-49:24.) When shown Service Mark 2,682,978, Mr. Santana Gallego testified:

> Q: Are you familiar with that symbol located on –
> A: According to me, this start in Yucca Valley.
> Q: So it's your testimony that Claudia did not create the triangle design around the name "Santana's Mexican Food," is that your testimony?
> A: Benito did this.
> Q: So it's your belief that Benito created the triangle, saw-toothed pattern that is sandwiched between Santana's Mexican Food," correct?
> A: According to me, yes, according to me.
> Q: What do you base that belief of?
> A: I remember when we were making it in Yucca Valley.

Q: Making what?
A: Those signs.
Q: By "we," who are you referring to Benny or Benito.
A: Making it, I was helping him, Benito.
. . .
Q: But did Benny tell you he designed this symbol?
A: No. I understand that I saw him,
Q: Saw him build it?
A: I helped him.
Q: But did he tell you he was actually the first one to invent or design this symbol in Respondent's Exhibit 6?
A: According to me, yes.
Q: Do you recall what Benny told you about that?
A: No, I don't remember. I remember we made it, and then he put it on the wall.

(ASG 48:15-49:49:24; see also ASG 54:19-55:6; 60:18-61:2.) Arturo Santana Lee assisted his father and brother by cutting the letters and installing the sign. (Arturo SL 107:12-22 & Exh. P-6.) At that time, the sign had the words **ES MUY BUENO** just as shown in the photograph. (Arturo SL 108:12-19.)

C. Mr. Santana Gallego's Sons All Worked In the Restaurants With Him

Mr. Santana Gallego has four sons, Arturo Santana Lee, Pedro Santana Lee, Benito Santana Lee and Abelardo Santana Lee. (ASG 4:17-5:6.) Arturo Santana Lee is the eldest. (ASG 5:5-6.) Abelardo Santana Lee is the youngest. (ASG 5:3-4.) All of Mr. Santana Gallego's sons worked at his restaurants. (ASG 10:10-19 ("All of them helped me, see."); Arturo SL 7:25-9:8 (detailing work history).) Mr. Santana Gallego taught them how to cook and about the business. (ASG 11:8-10 ("I taught them everything I could to work, and they turned out to be very hard working.").)

D. Mr. Santana Gallego Gave the Point Loma Restaurant to Abelardo And Kept the Yucca Valley Restaurant

Mr. Santana Gallego gave the Point Loma/Rosecrans Restaurant to his youngest son, Abelardo and Abelardo's wife, Claudia Vallarta Santana. (ASG 12:25-13:19 ("I told Abelardo to keep the business.").) At that time, Mr. Santana kept the Yucca Valley **SANTANA'S MEXICAN FOOD** and continued to operate it using that same name. (ASG 13:2-3.) At that time, Mr. Santana Gallego had

absolutely no discussions with either Abelardo or Claudia about giving them the exclusive use of the name **SANTANA'S MEXICAN FOOD.** (ASG 14:3-15:8.) Mr. Santana could not think of anything he ever said or did that would have given Abelardo the impression that he had the right to control or to exclusively use the name **SANTANA'S MEXICAN FOOD.** (ASG 15-4.16.) Mr. Santana does recall that he "left him the business" and that Abelardo and Claudia "did all the papers." (ASG 39:16-18.)

Although Mr. Santana Gallego testifies he gifted the operations of the Point Loma/Rosecrans restaurant to his youngest son, Abelardo, Abelardo and his wife Claudia, claim that they purchased the restaurant from him. (Abelardo SL1 6:1-7:25.) They claim that Abelardo forgave a $20,000 loan owed to him by his father and that Abelardo also gave his father his interest in an apartment building in Tecate, Mexico. (Id.). Abelardo was unable to identify the location of the building or to produce any documents or information about this purported transaction (Abelardo SL1 7:2-25.) Mr. Santana Gallego does not recall such a transaction and denies every having had any interest in the real estate claimed by Abelardo. And, Arturo Santana Lee says that the transaction did *not* occur. (Arturo SL 74:11-14.)

After Mr. Santana Gallego gave the Point Loma/Rosecrans Restaurant to Abelardo and Claudia, he continued to own the Yucca Valley restaurant. (ASG 23:10-14; Abelardo SL1 16:21-24; Abelardo SL1 1 17:3-8.)) Both the Point Loma Restaurant and the Yucca Valley Restaurant continued to maintain roughly the same menu and used the same suppliers. (Abelardo SL1 1 17:14.22.) Neither Abelardo nor Claudia ever exercised any control over the Yucca Valley Restaurant, its recipes, its menus, its décor or its signage. (ASG 23:10-20.) Neither Abelardo or Claudia ever participated in the radio advertising for Yucca Valley, or in any other advertising (ASG 23:2-25; 25:1-12.) Neither Abelardo nor Claudia have ever exercised any control over how Mr. Santana Gallego ran the Yucca Valley restaurant. (ASG 24:21-25; Abelardo SL1 1 22:11-23:11; Abelardo SL1 24:13-20 ("I had no control

over it."); Abelardo SL1 24:21-25.)

Although it has been sixteen or seventeen years since Abelardo and Claudia received the Point Loma Restaurant from Mr. Santana Gallego, Abelardo continues to use the same tortilla supplier that Mr. Santana Gallego used years ago. (Abelardo SL1 32:8-16.) The tortillas are used *in every single dish* prepared and offered at all eight of Abelardo's restaurants. (Abelardo SL1 33:23-34:6.) At least twenty-five percent of the menu remains the same. (Abelardo SL1 32:2-7.) Abelardo continues to offer the "California Burrito" at each of his restaurants. (Abelardo SL1 37:9-38:9.)

E. Mr. Santana Then Entered Into a Business Transaction with Arturo Castaneda For the Yucca Valley Restaurant

Mr. Santana Gallego entered into a business transaction with Arturo Castaneda concerning the Yucca Valley Restaurant. (ASG 15:17-25.) Abelardo did not want his father, Arturo Santana Gallego, to sell the Yucca Valley Restaurant to Arturo' Castaneda and tried to tell his father how to structure the transaction. (ASG 14:14-16; Abelardo SL1 21:9-14; see also Claudia VS1 17:9-22 ("Q: And he ignored your advice, right? A: Yes.)) Mr. Santana Gallego did it anyway and did not listen to his youngest son's advice. (Id.; Abelardo SL1 21:13-15) The sale has not yet been completed because Mr. Castaneda is still paying Mr. Santana Gallego the agreed upon purchase price of approximately $ 1 million. (ASG 16:1-10; 29:12-25.) As part of the sale, Mr. Santana Gallego provided Arturo Castaneda with Yucca Valley's operating restaurant, the building that houses it, and a truck. (ASG 32:4-14.) Mr. Santana Gallego did *not* sell Arturo Castaneda the name, "Santana's Mexican Food." (ASG 32:17025.)

Mr. Santana Gallego describes an oral agreement that permits Arturo Castaneda to use the name "Santana's Mexican Food," by which Mr. Santana Gallego retains ownership of the name. (ASG 35:3-36:14.) Although Arturo Castaneda has gone on to open other "Santana's Mexican Food" restaurants, all

restaurant openings are preceded by discussions between Mr. Santana Gallego and Arturo Castaneda. (ASG 16:7-18.) Arturo Castaneda asks Mr. Santana Gallego for permission to open new restaurants at particular locations. (ASG 54:11-15.) And, Mr. Santana Gallego controls the locations where Arturo Castaneda opens restaurants – he would stop Arturo Castaneda from using the name "Santana's Mexican Food" if Arturo Castaneda opened a restaurant near one of the Santana sons' restaurants. (ASG 50:14-17; ASG 54:16-18.)

At each of his restaurants, Arturo Castaneda serves the "California Burrito" using the same recipe as Mr. Santana Gallego. (Castaneda 10:15-11:6; Castaneda 26:16-19 ("It's part of the main menu.")) He uses the same menu and serves the same food as Mr. Santana Gallego did. (Castaneda 11:11-12:7.) He even used the same tortilla vendor. (Castaneda 20:21-21:14.) He understood that he was entitled to use the name both at Yucca Valley and at new restaurants he opened, provided that Mr. Castaneda talked to Mr. Santana Gallego before opening any new ones, to obey Mr. Santana Gallego's conditions, which includes not opening any restaurants using the name "Santana's" near Mr. Santana Gallego's sons. (Castaneda 15:18-16:2; 17:24-18:11.)

Mr. Santana Gallego regularly visits Arturo Castaneda's restaurants, and, if he sees something that "doesn't look very good," Mr. Santana Gallego talks to Arturo Castaneda about making the appropriate changes. (ASG 16:23-17:9; see also ASG 55:16-57:3; Castaneda 18:18-19:25 ("these places are his").)

Mr. Santana Gallego explained that when he "did the business operation" with Arturo Castanedo, he told Arturo Castaneda that he was going to have certain rights in connection with the **SANTANA'S MEXICAN FOOD** restaurants and he has gone to the restaurants for the purpose of exercising those rights and inspecting the businesses. (ASG 17:10-18:17.) Mr. Santana Gallego says that he has the right to decide to remove the name **SANTANA'S MEXICAN FOOD** should he have a significant disagreement over the manner in which Arturo Castaneda runs the

restaurants. (ASG 27:1-16.) He has the "final say" as to both where Arturo Castaneda opens restaurants and what he can serve at the restaurants. (ASG 71:6-25; ASG 72:1-23.) Mr. Santana Gallego takes the same position with the restaurants operated by his sons. (ASG 27:8-23.) His reasoning is that "I'm the founder of the name and the long-time right automatically gives it value and makes me owner." (ASG 27:21-23.)

Mr. Santana Gallego retained a right of reversion of the restaurant, in the event Arturo Castaneda breaches any terms of the license or the purchase agreement. (ASL 73:-15-19.)

> Q: Now, if Mr. Castaneda breaches any of the terms of the sale agreement for the Yucca Valley restaurant, is it your understanding that you have a right to take back the Yucca Valley restaurant, to take back ownership of the Yucca Valley restaurant?
> A: Yes
> Q: Is it also your understanding that if Mr. Castaneda doesn't follow your instructions regarding the type of food sold, quality of food, that you can make him stop using the Santana's Mexican Food name, correct?
> A: Yes, I would put it in writing, and then he would take it off. That's the understanding.

(Arturo SL 73:22-74:1; see also ASG 80:3 (also has final say over cleanliness of restaurant). Referring to the name of the restaurant, "Santana's Mexican Food," Mr. Santana Gallego stated, "He knows that I can very well request for him to take it off." (ASG 91:12-18.) Mr. Castaneda agrees:

> Q: Is it also your understanding that he [Arturo Santana Gallego] could take back the Yucca Valley restaurant?
> A: Yes, yes.

(Castaneda 58:11-13.) Because of his familiar relationship, he does not charge either of his sons a licensing fee for use of the name "Santana's" but is in discussions with Arturo Castaneda "rent" for use of the name. (ASG 93:15.23.) Just as with Arturo Castaneda, if Mr. Santana Gallego saw either of his sons using the name in a way that he did not think was satisfactory, he would talk to them and expect them to fix it. (ASG 96:16-97:8.) So far, however, his sons have run all

restaurants very well and have not given Mr. Santana Gallego any reason to exercise control over their operations. (ASG 96:16-18.)

F. In the Meanwhile, Arturo Santana Lee Opened Santana's Mexican Grill in 1997

Mr. Santana Gallego's eldest son, Arturo Santana Lee, worked in the restaurant business, off and on, with his father for several years. (Arturo SL 7:25-9:8 (detailing work history).) After a brief stay in Mexico, the eldest son, Arturo Santana Lee, returned to the United States in 1997. (Arturo SL 9:9-16.) He opened a restaurant in El Cajon, California, just outside of San Diego. (Arturo SL 9:14-22.) His father assisted him in selecting a location "so that I wouldn't have any problems.") Arturo SL 10:2-17.) Mr. Santana Gallego and Arturo Santana Lee found the restaurant location together. (Arturo SL 10:6-7; 47:11-14.) It was also located close to Arturo Santana Lee's home in Tecate, Mexico. (Arturo SL 47:11-22.)

When Arturo Santana Lee went to open the new restaurant in El Cajon, his younger brother, Abelardo, and Abelardo's wife, Claudia, helped with personnel, insurance and by guaranteeing the lease. (Arturo SL 10:16-11:11; Arturo SL 11:20-12:12:17; Arturo SL 96:23-97:13.) Neither Abelardo nor Claudia were ever, however, tenants under the lease for the El Cajon Restaurant. (Arturo SL 11:10-12; Arturo SL 60:7-17.) Nor were they "additional insureds" under the insurance policies for the restaurant. (Arturo SL 12:12-17.) Arturo Santana Lee's impression as to why Abelardo helped him was because he was his brother, they had a family history of both getting along and helping one another out, and because Arturo Santana Lee could not speak English. (Arturo SL 12:19-13:9; 62:15-63:2.)

Ultimately, Arturo Santana Lee decided to name the El Cajon Restaurant **SANTANA'S MEXICAN GRILL.** (Arturo SL 13:10-12.) He chose this name because he was grilling the meat in a charcoal grill initially, and he ultimately removed the grill, he retained the name. (Arturo SL 13:14-24; Arturo SL 56:3-6;

Arturo SL 104:23-105:4.) Arturo Santana Lee first used the name **SANTANA'S MEXICAN GRILL** in 1997. (Arturo SL 13:25-14:3; Claudia SL 21:20-24.) He also filed a fictitious business name statement for that business name (Arturo SL 14:4-23 & Ex. P-4.) Although his sister-in-law, Claudia, may have assisted him in filling out that paperwork, neither Claudia nor Abelardo ever owned any interest in the El Cajon Restaurant. (Arturo SL 15:9-14.) Nor did either Abelardo or Claudia come up with the name **SANTANA'S MEXICAN GRILL.** (Arturo SL 56:7-24.) Arturo Santana Lee never participated with Abelardo or Claudia in any plan to create a collectively owned chain of restaurants. (Arturo SL 109:3-7.)

Arturo Santana Lee used the same colors for the El Cajon Restaurant as his father had used to decorate the Yucca Valley Restaurant. (Arturo SL 19:5-21:15.) A photograph of the Yucca Valley Restaurant, taken in around 1988 or 1989, shows the exterior of the Yucca Valley Restaurant along with the road marquee, using orange, blue and green to identify the restaurant. (Arturo SL 19:10-20:23 & Ex. P-5.) A photograph taken around 1991 shows similar colors on the exterior of the restaurant and the signage, with the additional use of white as a background on the sign. (Arturo SL 20:9-21:15 & Ex. P-6; Benito SL 19:16-22:8 (testifying both signs were for Yucca Valley Restaurant and first one created in late 1980's or early 1990's)). Subsequently, when Arturo Santana Lee opened the El Cajon Restaurant in 1997, he used the same colors to decorate the name of the restaurant and (Arturo SL 26:10-28:17 & Exhs P-7, P-8.) Neither Claudia nor Abelardo assisted Arturo Santana Lee in preparing the triangles that accompanied the name **SANTANA'S MEXICAN GRILL** at the El Cajon Restaurant. (Arturo SL 29:2-18.)

Arturo Santana Lee used the same menu that his father had used in connection with the original **SANTANA'S MEXICAN FOOD** restaurants. (Arturo SL 47:23-49:7.) He did not use the "specials" that Abelardo and Claudia had been offering at their restaurants. (Arturo SL 48:14-49:9.) The food was even prepared the same as

when Mr. Santana Gallego was operating the original restaurants. (Arturo SL 66:24-67:7.)

After Arturo Santana Lee opened the El Cajon Restaurant, Claudia visited a few times and Abelardo as well. (Arturo SL 30:24-31.3.) From time to time, they each offered Arturo Santana Lee advice, but never indicated that they believed they had a right to control his operations or how the name "Santana's Mexican Grill" was used at the El Cajon Restaurant. (Arturo SL 31:4-33:19.) Arturo Santana Lee did not give any operational control to either Claudia or Abelardo. (Arturo SL 33:8-19.)

The major conflict in evidence is between the two brothers – Abelardo and Arturo – as to what arrangements they reached, if any, when the El Cajon Restaurant was opened. Arturo testifies that he thought of the name, registered the fictitious business name and found the location with his father's consent and permission. Arturo says he never had any discussions whatsoever with Abelardo that could have made Abelardo think that Arturo was relinquishing control over any aspect of the business, other than to his father. Abelardo, on the other hand, claims that both agreed that Abelardo would own the name, **SANTANA'S MEXICAN GRILL.** (Abelardo SL1 43:10-22.) The flaw in Abelardo's "story" is that he claims that Arturo agreed that Abelardo had purchased the name from their father – except Abelardo forgets that, at the time, Arturo Santana Gallego continued to operate his own **SANTANA'S MEXICAN FOOD** in Yucca Valley. (Claudia VS1 21:24-22:9.) Also, Abelardo claims that because he helped "establish" the El Cajon Restaurant, he has rights to it and to the name. (Abelardo SL1 46:12-13.) Yet, he refuses to acknowledge his own father's contribution, creation and ownership of the name he "established," that is, **SANTANA'S MEXICAN FOOD.** (Abelardo SL1 46:14-16.) Claudia expresses that since she helped Arturo open the El Cajon Restaurant, he should have done "the same thing" as Claudia and Abelardo in running their restaurants – his failure to accede to her operational control is, she claims, evidence of his "disloyalty." (Claudia VS1 19:3-21:6; Claudia VS1 27:15-

28:2 ("[Arturo Santana Lee] would not have been able to open that restaurant if it wasn't for me.))

G. Claudia and Abelardo Admit Failing to Tell the Trademark Office That Santana's Mexican Grill Was First Used by Arturo Santana Lee at the El Cajon Restaurant

1. The Registrations

Registrant Santana's Grill, Inc. was formed in on April 3, 1998 by Claudia and Abelardo. (Claudia VS1 18:11-13.) In 2001, Registrant applied for three trademarks. (Pet. NOR Tab 6.) Claudia Vallarta Santana was the Vice-President of Registrant and had the authority to sign the declarations on its behalf. These include:

Reg. No. 2,634,976 – SANTANA'S MEXICAN GRILL, Class 42

Reg. No. 2,631,458 – SANTANA'S MEXICAN FOOD . . ES MUY BUENO, Class 42

Reg. No. 2,682,978 – SANTANA'S MEXICAN FOOD . . ES MUY BUENO HOME OF FAMOUS CALIFORNIA BURRITO (and drawing), Class 42

2. The Failures to Be Honest With the Trademark Office Concerning Reg. No. 2,634,976, "SANTANA'S MEXICAN GRILL"

Abelardo admits that he did not use the name "Santana's Mexican Grill" on any restaurant until July of 1989 when he first used it at the Midway Restaurant in the San Diego area. (Abelardo SL1 47:15-18.) He also acknowledged that in connection with the trademark application for **SANTANA'S MEXICAN GRILL,** his corporation, Santana's Grill, Inc. failed to disclose the prior use by his brother of the words **SANTANA'S MEXICAN GRILL** in association with the El Cajon Restaurant. (Abelardo SL1 51:9-13.)

Claudia admits that she knew at all times that her brother-in-law owned the El Cajon Restaurant named **SANTANA'S MEXICAN GRILL**. (Claudia VS1 28:3-5; Claudia VS1 30:6-13.) "Of course, I did. I set it up." (Claudia VS1 30:10.) She also admits that she was aware that the El Cajon Restaurant used the name

SANTANA'S MEXICAN GRILL as early as 1997. (Claudia VS1 27:15-20; Claudia VS1 30:11-13.) She also admits that Registrant did not used the name **SANTANA'S MEXICAN GRILL** until July of 1998 when it first opened the Midway Restaurant. (Claudia VS1 31:19-23; Claudia VS1 33:1-7.) With respect to Claudia's declaration accompanying seeking registration of **SANTANA'S MEXICAN GRILL**, Claudia admits that Registrant's date of actual first use was July of 1998, but that her Declaration failed to disclose the use of **SANTANA'S MEXICAN GRILL** by Arturo Santana Lee at the El Cajon Restaurant. (Claudia VS1 34:6-25.) She blames this failure on her counsel. (Claudia VS1 34:22-35:22.)

3. The Failures to Be Honest With the Trademark Office Concerning Reg. No. 2,631,458 **SANTANA'S MEXICAN FOOD . . . ES MUY BUENO**

Claudia admits that in 2001 when she signed the declarations that accompanied Registrant's three applications, she was aware that the Yucca Valley Restaurant still existed and was using the name **SANTANA'S MEXICAN FOOD**. (Claudia VS1 15:1-5.) She was aware that her father-in-law, Mr. Santana Gallego, continued to own and operate the Yucca Valley Restaurant. (Claudia VS1 15:6-12; Claudia VS1 21:24-22:9.) She was also aware that Mr. Santana Gallego continued to use the words **SANTANA'S MEXICAN FOOD . . . ES MUY BUENO** in association with the Yucca Valley Restaurant. (Claudia VS1 39:1-5.)

4. The Failures to Be Honest With the Trademark Office Concerning The Dates of First Use of the Marks

Claudia admits that at the time that she signed the declarations that accompanied Registrant's three applications under the penalty of perjury that she was aware that Registrant had not even been formed until April 3, 1998. (Claudia VS1 28:5-29:2 Claudia VS1 32:21-25 & Exh. P-1; Claudia VS1 33:8-24 & Exh. P-2; Claudia VS1 36:14-23 & Exh. P-3.) She admits that, nevertheless, she claimed that *Registrant* had begun using the marks as early as *1988*, although Registrant was not even formed until ten years later. (Claudia VS1 29:3-22; Claudia VS1 37:36;21-

37:23.)

5. The Similarity and Confusion Between the Marks

Claudia also explained that Registrant uses *both* **SANTANA'S MEXICAN FOOD** and **SANTANA'S MEXICAN GRILL** because "[n]obody reads the end of Santana's Mexican Grill." (Claudia VS1 22: 18-24.) As a result, Registrant uses **SANTANA'S MEXICAN FOOD** and **SANTANA'S MEXICAN GRILL** variously for its restaurants. (Claudia VS1 23:7-24:2.) All seven of Registrant's restaurants uses the same menus, same colors, same signage (Claudia VS1 25:20-26:24.) She admits that "the public says 'Santana's' only.") (Claudia VS1 26:21-27:1 ("They [the public] just use Santana's"). She has also seen evidence of customer confusion between the ownership of the restaurants named **SANTANA'S MEXICAN FOOD** and **SANTANA'S MEXICAN GRILL.** (Claudia VS1 27:14-16.)

IV. ARGUMENT

A. Reg.: 2,631,458: Registrant Committed Fraud on the Trademark Office

SANTANA'S MEXICAN FOOD . . . ES MUY BUENO

A mark may be canceled at any time on the ground that it was obtained fraudulently. Lanham Act § 14, 15 U.S.C. § 1064(c). To demonstrate that a federal trademark registration was fraudulently procured, a challenging party must adduce evidence that the registrant actually knew or believed that someone else had a right to the mark. Lanham Trademark Act § 1, 15 U.S.C. § 1051; Marshall v. Treadwell, 240 F.3d 184, 57 U.S.P.Q. 2d 1764 (3d Cir. 2001). Fraud in procuring a trademark registration or renewal occurs when an applicant knowingly makes false, material representations of fact in connection with his or her application. See Le Cordon Bleu, 451 F.Supp. 63, 72 n. 14, 202 U.S.P.Q. 147, 154 n. 14; (S.D.N.Y. 1978); Schwinn Bicycle Co. v. Murray Ohio Manufacturing Co., 339 F.Supp. 973, 983, 172 U.S.P.Q. 14, 21 (M.D.Tenn.1971), aff'd, 470 F.2d 975, 176 U.S.P.Q. 161 (6th

Cir.1972). "[T]he obligation which the Lanham Act imposes on an applicant is that he will not make knowingly inaccurate or knowingly misleading statements in the verified declaration forming a part of the application for registration." Bart Schwartz International Textiles, Ltd. v. Federal Trade Commission, 289 F.2d 665, 669, 129 USPQ 258, 260 (CCPA 1961) (emphasis in original).

Fraud in obtaining a trademark registration occurs "when an applicant knowingly makes a false, material misrepresentation of fact in connection with his application." Torres v Cantine Torresella S.R.l., 808 F.2d 46, 1 U.S.P.Q.2d 1483, 1484 (Fed. Cir. 1986). To constitute fraud on the PTO, the "statement must be (1) false, (2) a material misrepresentation and (3) made knowingly." Torres. "A Trademark applicant commits fraud in procuring a registration when it makes material misrepresentations of fact in its declaration which it knows or should know to be false." Medinol Ltd. v. Neuro Vasx Inc., 67 U.S.P.Q.2d 1205 (TTAB 2003). Fraud must be proven with clear and convincing evidence, and doubts are resolved against a finding of fraud. Standard Knitting, Ltd. v. Toyota Jidosha Kabushiki Kaisha, 77 U.S.P.Q.2d 1917 (TTAB 2006). Fraud will not lie if it can be proven that the statement, though false, was made "with a reasonable and honest belief that it was true." See id. Woodstock Enterprises, Inc. v. Woodstock Enterprises Inc., 43 U.S.P.Q.2d 1440 (TTAB 1997).

In this case, Registrant committed fraud on the trademark office in *two* material respects. First, Registrant claimed date of first use of 1988, although when Registrant did not even exist until ten years later, and she admits that she and her husband did not acquire any interest in the Rosecrans Restaurant until 1991 or 1992. Second, Registrant failed to advise the Trademark Office that Mr. Santana Gallego retained the rights to the name and slogan and that he continued to use both at the Yucca Valley Restaurant at the time the Registration was sought and obtained. Claudia Vallarta Santana admits that she, at all times, knew that her father-in-law, Arturo Santana Gallego, continued to use the mark **SANTANA'S MEXICAN**

FOOD . . .ES MUY BUENO in association with the Yucca Valley Restaurant.

In Standard Knitting, Ltd. v. Toyota Jidosha Kabushiki Kaisha, 77 U.S.P.Q.2d 1917 (TTAB 2006) the Board cancelled three registrations relied on by Standard, finding that Standard's false statements to the PTO regarding use of its marks on certain clothing items constituted fraud. The instant case presents a much stronger case for fraud than that presented in Standard Knitting. There, the Board made a finding of fraud where the goods were not in use on the dates of filing a used-based applications, even where the company executives claimed they made honest mistakes because they did not know what products were actually being made and what the legal meaning was of "use in commerce." Standard Knitting.

In contrast, here, Claudia Vallarta Santana made three false statements, each of which were material, and with the *knowledge* that the statements were false. Registrant's first false statement was that *Registrant* had used the mark since April 4, 1988. However, Claudia Vallarta Santana knew full well that Registrant was not even formed until 1998. Cf. Department of Justice, FBI v. Calspan Corporation, 578 F.2d 295, 198 U.S.P.Q. 147 (U.S.C.C.P.A. 1978) (no need to transfer mark where corporate entity merely changed name, and under New York law, still existed as same entity). Claudia Vallarta Santana, who was an officer at all times since the incorporation of Registration, knew full well that Registrant was not formed during the time of the use she claimed on behalf of Registrant. Registrant's second false statement was that "no other person, firm, corporation or association has the right to use" the mark. In fact, Claudia Vallarta Santana knew that her father-in-law was using and had a right to use the mark on the Yucca Valley Restaurant.

In Standard Knitting, the Board cancelled the three marks based on fraud, where the facts showed that the company executives had been merely careless in making their statements:

> It is important to note that the United States Patent and Trademark Office relies on the thoroughness, accuracy and honesty of each applicant. In general, the Office does not inquire as to the use of the

> mark on each good listed in a single class and only requires specimens of use as to one of the listed goods, relying on applicant's declaration with regard to use on the other listed goods. TMEP §§ 806.01(a) and 904.01(a) (4th ed. 2005). Allowing registrants to be *careless* in their statements of use would result in registrations improperly accorded legal presumptions in connection with goods on which the mark is not used.

Standard Knitting.. By contrast, here, Claudia Vallarta-Santana was *more* than careless. She *knew* when Registrant was formed and she *knew* that her father-in-law was using the mark **SANTANA'S MEXICAN FOOD . . . ES MUY BUENO.**

Claudia Vallarta-Santana claims that: (a) she thought the corporation and she and her husband were one and the same; (b) she thought that her father-in-law had given she and her husband the name **SANTANA'S MEXICAN FOOD**; and (c) it was all her lawyer's fault. Whatever the justifications for making the false statements, the false statements were made, were material, and do not cure the fraud occasioned on the Trademark Office. See Standard Knitting (finding company executive signed declaration with "reckless disregard of the truth").

B. Reg.: 2,634,976: Registrant Committed Fraud on the Trademark Office

SANTANA'S MEXICAN GRILL

Pursuant to Ohio State University v. Ohio University, 51 U.S.P.Q. 2d 1289 (TTAB 1999), a declaration in an application to register constitutes fraud when: (1) there was in fact, another use, prior to applicant's use, of the same mark at the time the declaration was executed; (2) the prior user had legal rights superior to the rights of the applicant; (3) the applicant knew that the other user had superior rights in the mark, and either believed that a likelihood of confusion would result or had no reasonable basis for believing otherwise; and (4) applicant, in failing to disclose these facts to the United States Patent & Trademark Office, intended to procure a registration to which it was not entitled. Id. at 1293 (citing Intellimedial Sport, Inc. v. Intellemedia Corp., 43 U.S.P.Q.2d 1203, 1206 (TTAB 1997)).

In the declaration before the USPTO, Claudia Vallarta stated that the "service

mark was first used in connection with the services on or before July 1998." (Pet. NOR TAB 6.) She also stated that "no other person, firm, corporation or association has the right to use the mark in commerce." *Both* of these statements were false and both were material. At trial, Claudia Vallarta Santana *admitted* that she knew, at all times, that her brother-in-law, Arturo Santana Lee, had begun using the mark **SANTANA'S MEXICAN GRILL** in 1997, the year before Registrant began to use it. She failed to advise the USPTO of her own brother-in-law's known use. Further, she admitted that she has known at all times that Arturo Santana Lee continued to use the mark. Nevertheless, she stated that she had no such "knowledge or belief" in Registrant's trademark application. Finally, Registrant disclaimed the exclusive use of the words **MEXICAN GRIL**L, leaving only the term **SANTANA'S** behind. Claudia Vallarta Santana even testified that the public knows **SANTANA'S**, and does not care whether the end contains the words **MEXICAN FOOD** or **MEXICAN GRILL**. Accordingly, the "first use" of the mark SANTANA'S really is that of her father-in-law, Mr. Santana Gallego. And, as described above, Claudia Vallarta Santana knew at all times that Mr. Santana Gallego had a priority of use of the mark **SANTANA'S MEXICAN FOOD** and that even as she submitted the false declaration, he continued to use the mark **SANTANA'S MEXICAN FOOD . . . ES MUY BUENO** in association with his Yucca Valley Restaurant.

C. Reg.: 2,682,978: Registrant Committed Fraud on the Trademark Office

SANTANA'S MEXICAN FOOD . . . ES MUY BUENO

HOME OF FAMOUS

CALIFORNIA BURRITO (and design)

Registrant claimed falsely that: (1) the service mark was first used in or before 1988; (2) no other "person, firm, corporation or association" had the right to use the mark. The statements were material and *knowingly* false, in that Claudia Vallarta Santana testified that: (1) Registrant did not even exist until ten years later,

in 1998; (2) she *knew* that her brother-in-law, Arturo Santana Lee, and her father-in-law, Arturo Santana Gallego were using the identical words and design in each of their restaurants the El Cajon Restaurant and the Yucca Valley Restaurants at the time that she submitted the Application. Further, as Mr. Santana Gallego testified, the sawtooth pattern with the blue and orange triangles was created in the Yucca Valley Restaurant long before Abelardo and Claudia ever acquired any interests in the Point Loma Restaurant.

D. Mr. Santana Gallego Claims Priority of Use for SANTANA'S MEXICAN FOOD (2,682,978)

With respect to all three marks at issue, Mr. Santana Gallego used the marks before anyone involved in this proceeding. Since 1987 or 1988, Mr. Santana Gallego has been the owner of the Santana family of marks, including **SANTANA'S MEXICAN FOOD** and **SANTANA'S MEXICAN FOOD . . . ES MUY BUENO!** Even after the transfer of the physical operations of two of his restaurants, the Point Loma Restaurant and the Yucca Valley Restaurant, Mr. Santana Gallego retained the ownership of the marks. In addition, Mr. Santana Gallego has continued to visit the various Santana's Mexican Food Restaurants, to control the quality and the menu selections offered, to ensure that the quality is the same, and to control the geographic locations of the various restaurants. Mr. Santana Gallego frequents the restaurants and provides conditions under which the restaurants can be operated using the marks **SANTANA'S MEXICAN FOOD** and **SANTANA'S MEXICAN FOOD . . . ES MUY BUENO!**

Mr. Santana Gallego began to use the mark as early as 1987, when he was asked by the Corona beer company to remove the name "Corona" from his two restaurants, Yucca Valley and Point Loma. He has continuously used the marks since then. Although he gifted the Point Loma Restaurant to Abelardo and Claudia in 1991 or 1992, they *never* had any discussions that would or should have led Abelardo or Claudia to belief that he was also giving them the *exclusive* right to the

mark or the ability to block others (like Mr. Santana Gallego's other business associates, licensees or sons) from using the mark **SANTANA'S MEXICAN FOOD . . . ES MUY BUENO.**

In fact, the conduct of the parties shows the opposite. Abelardo and Claudia even helped Arturo Santana Lee to set up the El Cajon Restaurant and admit that the significant portion of the mark is the word **SANTANA'S** and nothing else. In addition, both Abelardo and Claudia admit that they knew, all along, that Mr. Santana Gallego had retained the Yucca Valley Restaurant and used the mark **SANTANA'S MEXICAN FOOD . . . ES MUY BUENO** there. To this day, Mr. Santana Gallego retains a right to inspect the premises, control quality and cleanliness at the Yucaa Valley and other restaurants operated by Mr. Castaneda. Most significantly, both Mr. Santana Gallego and Mr. Castaneda agree that the terms of the license mean that Mr. Santana Gallego controls the locations where any new restaurants are opened, imposes conditions, and has the right to require Mr. Castaneda to remove the name **SANTANA'S MEXICAN FOOD** from any restaurant should Mr. Castaneda violate any conditions of the license.

E. There is a Likelihood of Confusion Between SANTANA'S MEXICAN FOOD . . . ES MUY BUENO (2,682,978) And SANTANA'S MEXICAN GRILL (2,634,967)

The test for determining the likelihood of confusion consists of two steps. First, the marks must be examined for similarities in appearance, sound, connotation, and commercial impression. Application of E.I. DuPont de Nemours & Co., 476 F.2d 1357, 177 U.S.P.Q. 563 (CCPA 1973). Second, the goods or services must be compared to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. In re August Storck KG, 218 U.S.P.Q. 823 (TTAB 1983); In re International Telephone and Telegraph Corp., 197 U.S.P.Q. 910 (TTAB 1978); Guardian Products Co., Inc. v. Scott Paper Co., 200 U.S.P.Q. 738 (TTAB 1978). In this instance, both tests are clearly met as to all three marks.

First, the test is clearly met as to two of the three marks **SANTANA'S MEXICAN FOOD** and **SANTANA'S MEXICAN FOOD . . . ES MUY BUENO!** used by Registrant are *identical* in sight, sound, meaning and pronunciation, as the ones used by Mr. Santana Gallego and his licensee. **ES MUY BUENO** means "it is very good" and has been disclaimed. The third mark, including the design, subsumes both of the first two marks, and certainly gives rise to a likelihood of confusion.

Second, the Yucca Valley Restaurant and the restaurants owned by Registrant all serve Mexican food, with the same menu choices, and all centered around the same "California Burrito" that Mr. Santana Gallego invented at the Yucca Valley Restaurant. All the restaurants use the same tortilla vendor, and provide the same "fresh" Mexican food that Mr. Santana Gallego and his licensees have served since opening the restaurants in the late 1980's. Generally, since the marks are virtually identical and "were used with identical products or services, likelihood of confusion would follow as a matter of course." Brookfield Communications, Inc. v. West Coast Entertainment Corp., 174 F. 3d 1036, 1053, 50 U.S.P.Q. 2d 1545 (9th Cir. 1999).

As Claudia Vallarta Santana testified, the public only cares about **SANTANA'S** and not whether the name is followed by either the words **MEXICAN FOOD** or **MEXICAN GRILL**. Claudia Vallarta Santana also testified that there exists confusion between all the restaurants with the name SANTANA'S. Presumably, for that reason, Claudia Vallarta Santana and Abelardo Santana wish to control and/or stop Mr. Santana Gallego from expanding his **SANTANA's** food enterprise through Mr. Castaneda and the efforts of all his sons. Despite the substantial investment Registrant may have made in the restaurants and in the three marks, the marks inure to the benefit of the first and continuous user – Mr. Santana Gallego.

"[T]here need not be formal quality control where the particular circumstances of

the licensing arrangement [indicate] that the public will not be deceived." Moore Bus. Forms, Inc. v. Ryu, 960 F.2d 486, 22 U.S.P.Q. 2d 1773 (1992) (quoting Taco Cabana Int'l v. Two Pesos, Inc., 932 F.2d 1113, 1121 (9th Cir. 1991). Indeed, "[c]ourts have upheld licensing arrangements where the licensor is familiar with and relies upon the licensee's own efforts to control quality." Morgan Creek Productions, Inc. v. Capital Cities/ABC, Inc., 22 U.S.P.Q.2d 1881, 1884 (C.D. Cal. 1991) (citing Transgo, Inc. v. Ajac Transmission Parts Corp., 768 F.2d 1001, 1017-18, 227 U.S.P.Q. 598 (9th Cir. 1985) (licensor had ten year affiliation with licensee and was familiar with his ability and expertise)); see, e.g., Taffy Original Designs, Inc. v. Taffy's Inc., 161 U.S.P.Q. 707, 713 (N.D. Ill. 1966) (licensor were sisters in business together for seventeen years, licensee's business was a continuation of the licensor's and licensee's prior business, licensor visited licensee's store from time to time and was satisfied with the quality of the merchandise offered).

Mr. Santana Gallego has never granted anyone the exclusive rights to use the marks. (Santana Gallego Tab 2 Decl. ¶ 11.) Since Mr. Santana Gallego first used the marks in commerce as early as 1987 and 1988, and by his licenses use of the marks (i.e. Abelardo, Arturo and Mr. Castenada), Mr. Santana Gallego retains the sole power to obtain federal trademark registrations of the marks. See 15 U.S.C. § 1127 (1988); Larry Harmon Pictures Corp. v. Williams Restaurant Corp., 929 F.2d 662, 18 U.S.P.Q.2d 1292 (Fed. Cir. 1991) cert. denied, 502 U.S. 823, 112 S.Ct. 85, 116 L.Ed. 2d 58 (1991) (holding that Congress intended to regulate interstate and foreign commerce to the full extent of its constitutional powers, and holding that restaurant's mark entitled to protection where services rendered to customers traveling across state boundaries); see also In re Smith Oil Corp., 156 U.S.P.Q. 62 (TTAB 1967) (serving food to interstate travelers is "commerce" and mark may be registered).

The Yucca Valley Restaurant co-existed with the Point Loma Restaurant and both used the mark **SANTANA'S MEXICAN FOOD** with and without the phrase

ES MUY BUENO as early as 1987 or 1988. When Mr. Santana Gallego gave (or sold) the Point Loma Restaurant to Claudia and Abelardo, he retained ownership over the marks, as evidenced by his continued use of the marks on the Yucca Valley Restaurant. By Abelardo and Claudia's own admissions, Mr. Santana Gallego *never assigned the exclusive rights* in the marks to Abelardo, Claudia or to their corporation, Registrant Santana Grill, Inc. Years later, Mr. Santana Gallego sold the physical business of the Yucca Valley Restaurant to a business associate, Arturo Castañeda, but maintained: (1) a reversionary interest in the physical assets of the Yucca Valley Restaurant; (2) control over the quality and menu choices of the food served; (3) control over the geographic growth of the enterprise; and (3) maintains his status as the owner and licensor of the subject marks.

Claudia and Abelardo appear to rest their entire registration rights on the transfer of the use of the fictitious business name of the Point Loma Restaurant from Mr. Santana Gallego to them. However, a registration to do business under local laws has no legal significance for trademark purposes. (See, e.g., Conti v. Anthony's Shear Perfection, Inc., 350 Pa. Super. 606, 504 A.2d 1316, 229 U.S.P.Q. 58 n. 2 (Pa. Super. 1986) (fictitious business name statement "does not suffice for trademark purposes").) In any event, in California, the first to file a fictitious business name is entitled to the presumption of the right to use that name. Cal. Bus & Prof. Code § 14416; see Citibank, N.A. v. City Bank of San Francisco, 206 U.S.P.Q. 997, 1980 WL 30239 (N.D. Cal. 1980) (citing Section 14416) (holding that since Plaintiff was the first to adopt and use the name it had superior rights). In the instant case, Mr. Santana Gallego was the first to adopt and to use the marks **SANTANA'S MEXICAN FOOD** with or without the phrase **ES MUY BUENO!** Accordingly, under California and federal law, Mr. Santana Gallego has superior rights with respect to these marks.

When it comes to **SANTANA'S MEXICAN GRILL**, again, Mr. Santana Gallego has superior rights[2] because, as licensee, not Santana's Grill, was the first to file a fictitious business name statement in San Diego and the first to use the mark in connection with his restaurant. An entity first filing a fictitious business name statement is entitled to a presumption that it has the exclusive right to use the name set forth on the statement. (See Citibank, N.A. v. The City Bank of San Francisco, 206 U.S.P.Q. 997, 1010 (N.D. Cal. 1980).) In this case, Santana Grill, Inc, has no evidence to rebut the presumption. Other than the assertion that Claudia and Abelardo helped his brother "set up" the restaurant, and the amorphous and vague suggestion that the two brothers would run their restaurants "the same," there are no facts to suggest that Santana Grill, Inc. owns the *exclusive* right to use the name.

F. Registrant's Use of 2,682,978 is Misdescriptive

The design includes the words **HOME OF THE FAMOUS CALIFORNIA BURRITO**. The phrase is misdescriptive, in that the "home" or the place of original of the "California Burrito" was at the Yucca Valley Restaurant, as Mr. Santana Gallego testified.

V. CONCLUSION

The intra-family dispute always raises sensitive issues and the optimism that the differences between hard-working family members could be resolved and settled. Unfortunately, this has not been one of those cases. Instead, by instituting

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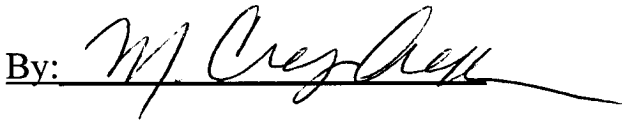
[2] Even if the Board does not attribute fraudulent intent to Claudia's declaration, the undisputable facts clearly establish use by Petitioner in 1987 or 1988, long before Registrant applied the marks to any products. See A.J. Canfield Co. v. Honickman, 808 F.2d 291, 1 U.S.P.Q. 1364 (3d Cir. 1986) (stating the doctrine that a senior user "has enforceable rights against any junior user who adopted the mark with knowledge of its senior use"). By its own admission, Santana's Grill, Inc. or its predecessors, Claudia and Abelardo, did not use the marks until 1991 or 1992. Accordingly, in that Santana's Grill, Inc. neither owned nor had used the mark that was the subject of a use-based application, the application should be considered void *ab initio* under Section 1 of the Lanham Act. Only the owner of a mark may register it. Thus, a second ground for cancellation is established.

federal litigation against his own father, Abelardo Santana Lee placed Mr. Santana Gallego in a position where he had no choice but to see cancellation of the three registrations. The evidence establishes that Mr. Santana Gallego is, and has always been, the senior user of the mark **SANTANA'S MEXICAN FOOD . . . ES MUY BUENO.** That alone, means that neither Reg. 2,634,976 for **SANTANA'S MEXICAN GRILL** nor Reg. 2,682,978 for **SANTANA'S MEXICAN FOOD . . . ES MUY BUENO HOME OF FAMOUS CALIFORNIA BURRITO** can stand as the property of Registrant.

Mr. Santana Gallego respectfully requests the Board to cancel all three marks based on the evidence and argument submitted herewith. Mr. Santana Gallego's intentions are not unfair or mercenary. His intent has never been to prohibit his son, Abelardo, from enjoying the fruits of his own hard work, only to stop Abelardo and his now ex-wife, Claudia Vallarta Santana, from unfairly impinging on the rights of the other Santana brothers and Mr. Santana Gallego and his business associate, Mr. Castaneda. If Mr. Santana Gallego prevails in this matter, he intends to offer Abelardo an appropriate written license agreement so that Abelardo can confidently continue to run and operate restaurants under the appropriate conditions set forth by the senior user and the licensor, Mr. Santana Gallego.

Dated: July 14, 2008 The Armenta Law Firm APC

By: 

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 11900 Olympic Boulevard, Suite 730, Los Angeles, California 90064.

On July 14, 2008 I served the following document(s) described as:

PETITIONERS TRIAL BRIEF

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Michael Sandstrum, Esq.
Bremer Whyte Brown & O'Meara, LLP
20320 S. W. Birch Street Second Floor
Newport Beach, CA 92660

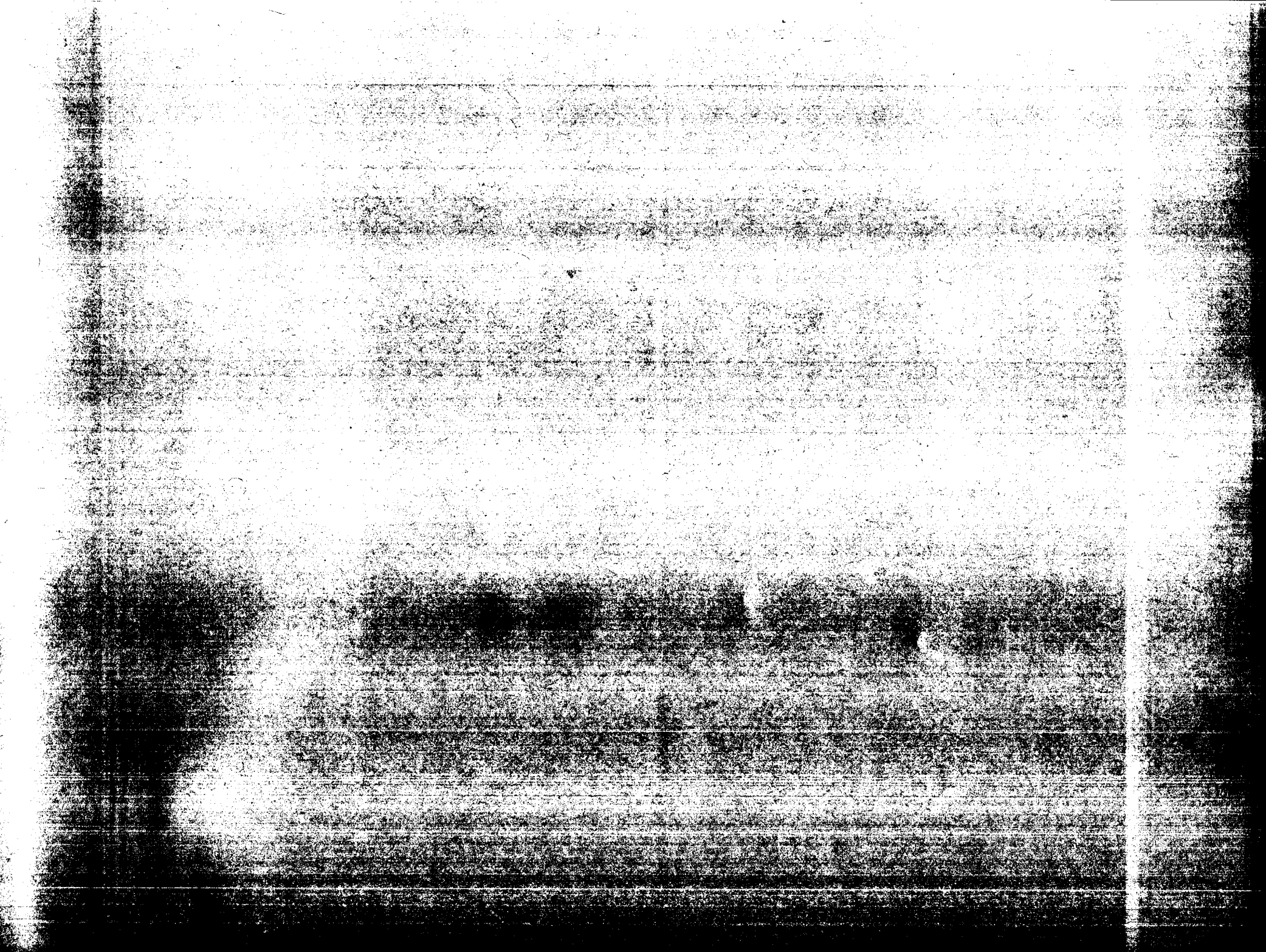
☑ BY ELECTRONIC MAIL, pursuant to the consent of the above counsel

☑ BY OVERNIGHT MAIL: I deposited such document(s) in a box or other facility regularly maintained by the overnight service carrier, or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier with delivery fees paid or provided for, addressed to the person(s) served hereunder. (C.C.P. §1013 (d)(e))

I declare under penalty of perjury under the law of the United States of America that the above is true and correct and 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 July 14, 2008 in Los Angeles, California.

Heather Rowland



Trial Deposition

Arturo Santana Gallego

(Cited as "ASG")

CERTIFIED COPY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ARTURO SANTANA GALLEGO, Petitioner, vs. SANTANA'S GRILL, INC., Registrant.	)	Cancellation Nos. 92043152 (Consolidated) 92043160 92043175

V O L U M E I

DEPOSITION OF ARTURO SANTANA GALLEGO

JANUARY 30, 2008

ABRAMS, MAH & KAHN
REPORTING SERVICE

Reported By: Lexann Christy
CSR No. 7932

File No.: 25612

4101 Birch Street • Suite 130
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ARTURO SANTANA GALLEGO, Petitioner, vs. SANTANA'S GRILL, INC., Registrant.	)	Cancellation Nos. 92043152 (Consolidated) 92043160 92043175

Volume I of the Deposition of ARTURO SANTANA GALLEGO, taken on behalf of Petitioner, at Bremer Whyte Brown & O'Meara LLP, 550 West C Street, Suite 1450, San Diego, California, commencing at 2:41 p.m., on Wednesday, January 30, 2008, before Lexann Christy, CSR No. 7932.

APPEARANCES OF COUNSEL:

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Also Present:

Eugenia Arguello, Certified Interpreter

Abelardo Santana
Claudia Vallarta-Santana
Arturo Castaneda

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ARTURO SANTANA GALLEGO VOLUME I	4	28		

E X H I B I T S

RESPONDENT'S EXHIBIT	DESCRIPTION	PAGE
R-6	United States Patent and Trademark Office Service Mark Principal Register, No. 2,682,978, 1 page	48

INSTRUCTIONS NOT TO ANSWER

(NONE)

INFORMATION REQUESTED

(NONE)

SAN DIEGO, CALIFORNIA, WEDNESDAY, JANUARY 30, 2008

2:41 p.m. - 5:11 p.m.

EUGENIA ARGUELLO,

an interpreter of the Spanish language, was duly sworn by the Certified Shorthand Reporter to interpret from English to Spanish and from Spanish to English the following proceedings:

ARTURO SANTANA GALLEGO,

called as a witness by and on behalf of the Petitioner, and having been placed under oath by the Certified Shorthand Reporter, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. ARMENTA:

Q Please state your full name for the record.

A Arturo Santana Gallego.

Q What relationship do you have with Arturo Santana Lee?

A He's my son.

Q And Abelardo Santana Lee?

A He's my son.

Q And Pedro Santana Lee?

A He's my son.

Q And Benito Santana Lee?
A He's also my son.
Q Who is the youngest son?
A Abelardo.
Q Who is the eldest?
A Arturo.
Q In what year did you first begin to work in the restaurant business?
A Excuse me. My oldest child is my daughter, Ana Lillian. I'm sorry for that.
Q But then your eldest son is Arturo?
A Arturo.
Q How old are you?
A 75.
Q In what year did you first enter the restaurant business?
A '79.
Q What were you doing then?
A At that time we lived in Tecate, and I had a business in Tecate.
Q When did you first work in the restaurant business in the United States?
A In '79.
Q What was the name of that business?
A That business started with Alberto's Mexican

Food, afterwards Corona's Mexican Food, then afterwards, Santana's Mexican Food.

Q While the restaurant was named Corona's Mexican Food, did the restaurant have one location or more?

A Only one.

Q Did you have a restaurant in Yucca Valley?

A Right away it was open, the one in Yucca Valley -- I'm sorry, Yucca Valley.

Q And was Yucca Valley at some point named "Corona's"?

MR. SANDSTRUM: I'm going to object as to leading.

THE WITNESS: Yes.

MR. SANDSTRUM: Object as leading the witness.

THE WITNESS: Yes, the two of them, both of them were changed to Corona's.

BY MS. ARMENTA:

Q So when you say "both of them," you mean the one in Yucca Valley and which other one?

A Point Loma.

Q Is Point Loma the one we've all been calling today the Rosecrans restaurant?

A Rosecrans.

Q Then what happened such that you removed the name "Corona's" from the Yucca Valley and the Rosecrans restaurants?

A The company of the Corona beer asked me to remove it.

Q And did you?

A Immediately.

Q Did you do one before the other in terms of changing the names or at the same time?

MR. SANDSTRUM: Objection. Leading.

THE WITNESS: I think it was at the same time, right away, right away.

MR. SANDSTRUM: Calls for speculation, move to strike.

BY MS. ARMENTA:

Q What name did you put on the restaurants after you took off the name "Corona's"?

A "Santana's Mexican Food."

Q What year was this?

MR. SANDSTRUM: Vague and ambiguous.

THE WITNESS: I don't remember. '87. I don't remember.

BY MS. ARMENTA:

Q Is it fair to say it was before 1990?

A A little bit after, I think.

Q A little bit after 1987? I have a feeling you're having trouble remembering dates; is that right?

A Yes, yes.

MR. SANDSTRUM: I thought the witness said a little

after 1990, and then counsel said a little after 1987. I just don't want any leading going on.

MS. ARMENTA: Then object.

Q But my question to the witness is: Are you having difficulty remembering years?

A And the dates.

Q Let me ask a different way, then. I'll just ask you in the order things happened and try not to refer to the year.

MR. SANDSTRUM: Well, I have an objection to that too. You're just telling the witness you're going to provide questions in a chronological format.

MS. ARMENTA: Right.

MR. SANDSTRUM: Instead of asking the witness when certain events occurred, and what --

MS. ARMENTA: Then object.

MR. SANDSTRUM: I am. This isn't a play.

BY MS. ARMENTA:

Q Now, you said that the name was changed from "Corona's" to "Santana's Mexican Food."

At what restaurants did that name change occur?

A At that time practically in both of them.

Q When you say the two, which two do you mean?

A Yucca Valley and Point Loma.

Q Now, did there come a time that you purchased any

advertising for the Santana's Mexican Food restaurant or restaurants?

A Yes. Different ones, but I don't remember the dates.

Q Tell me what you remember about purchasing advertising.

MR. SANDSTRUM: Vague and ambiguous as to which restaurant.

THE WITNESS: For instance, T-shirts and baseball caps. I don't remember very well, but also something made out of paper like calendars, or something like that. That's all.

BY MS. ARMENTA:

Q Did you buy any advertising in the media like on television or on the radio for Santana's Mexican Food?

MR. SANDSTRUM: Objection. Leading.

THE WITNESS: In Yucca Valley, yes. Here I don't remember.

BY MS. ARMENTA:

Q What did you purchase in Yucca Valley?

A We had an advertisement on the radio.

Q Do you remember how it went?

A It was some music, uh-huh. I remember that it was tequila in the middle of the night, at midnight, and tequila in the morning, and it's very good, muy bueno, it's

very good, muy bueno.

MS. ARMENTA: Objection to the translator. I think he used the words "Es Muy Bueno," which is one of the phrases at issue.

THE WITNESS: It's Es Muy Bueno. Whenever the song ended, it would say, "Es Muy Bueno."

BY MS. ARMENTA:

Q Did there come a time when -- strike that. Let me go back a little bit.

When did any of your sons first begin working with you in the Mexican food restaurant? And if you can't tell me the year, perhaps you can just tell me what the name of the restaurant was at that point.

A Well, all of them there, Pedro, Abelardo, Arturo and Benito, came only for a short time.

Q Did they work with you all at Alberto's or did different sons work in different restaurants?

A Well, all of them were -- some of them here, some of them there. All of them helped me, see.

Q What kind of training, if any, did you provide to your four sons who worked in the Mexican food business with you?

MR. SANDSTRUM: Object. It's compound in a way.

THE WITNESS: Can I answer?

BY MS. ARMENTA:

Q Please.

A They worked with Alberto's. Almost all of them went there to train. They went to work there. They worked -- they learned the kitchen at Alberto's.

Q What did they learn from you, if anything, in those early years?

MR. SANDSTRUM: Objection. Vague and ambiguous.

THE WITNESS: Well, I told them -- I mean, I taught them everything I could to work, and they turned out very hard working.

BY MS. ARMENTA:

Q What kind of food did you serve at the Yucca Valley restaurant?

MR. SANDSTRUM: Vague as to time.

THE WITNESS: The food that normally was served at all the Alberto's, all the Mexican businesses, Mexican food -- Mexican/American food.

BY MS. ARMENTA:

Q I'm trying to pinpoint you just around the time of the name change when the restaurant went from Corona's to Santana's Mexican Food.

In those couple of years after that, did you serve an item called the "California Burrito"?

MR. SANDSTRUM: Objection. Leading.

THE WITNESS: California Burrito, we made it -- the

first time it was made in Yucca Valley.
BY MS. ARMENTA:
Q When you say it was made for the first time in Yucca Valley, what do you mean by that?
MR. SANDSTRUM: I object. It lacks foundation.
THE WITNESS: Look, the food was very expensive. We really didn't make enough in order to buy meat, so I remembered that my mother used to make taquitos with potatoes and meat. That's what the California is. That's why I invented it and we made it there.
BY MS. ARMENTA:
Q Did you sell the California Burrito at that time to the public from your restaurant named "Santana's Mexican Food" in Yucca Valley?
A Yes, and here too.
Q When you say "here too," do you mean in Rosecrans also?
A Rosecrans.
Q Now, did there come a time when you handed the Rosecrans restaurant to your son, Abelardo, and his wife Claudia?
MR. SANDSTRUM: Vague and ambiguous.
THE WITNESS: No, I don't remember that.
BY MS. ARMENTA:
Q Did there come a time when you stopped being the

owner of the Rosecrans restaurant?

A I delivered it to them, Rosecrans, but not Yucca Valley.

Q When you delivered the Rosecrans restaurant to Abelardo and Claudia --

A Abelardo, yes, Abelardo.

Q -- did you retain ownership in the Yucca Valley restaurant at that time?

A Yes, yes.

Q Did you and Abelardo have any specific discussions at the time of that transaction by which you told him he had the exclusive right to use the name "Santana's Mexican Food"?

MR. SANDSTRUM: Objection. Calls for a legal conclusion, vague and ambiguous.

THE WITNESS: Can I answer?

MR. SANDSTRUM: Lacks foundation.

MS. ARMENTA: Yes.

THE WITNESS: I told Abelardo to keep the business.

BY MS. ARMENTA:

Q Did he ever ask you to remove the name "Santana's Mexican Food" from the Yucca Valley restaurant while you owned it?

A When he asked me that, I had already dealt with Arturo Castaneda. He really told me too late.

Q Was that the first time that Abelardo --
A Yes, it was.
Q Prior to your sale of Yucca Valley to Arturo Castaneda, did you ever have any conversations with Abelardo about removing the name "Santana's Mexican Food" from the Yucca Valley restaurant?
MR. SANDSTRUM: Asked and answered.
THE WITNESS: Okay, let's see again.
(The record was read.)
MR. SANDSTRUM: Same objection, asked and answered.
THE WITNESS: Can I answer now?
BY MS. ARMENTA:
Q Yes.
A Abelardo never wanted me to sell Yucca Valley, but I sold to Arturo Castaneda, but I wasn't even waiting for him to have -- to be ambitious.
MS. VALLARTA-SANTANA: Sorry, but she translated wrong. To have any ambition, not to be ambitious.
THE INTERPRETER: To have any ambition. It's the same to me.
BY MS. ARMENTA:
Q You can finish, or are you done?
A I'm through.
Q My question is, just before the time that you sold to Arturo Castaneda, did you and Abelardo ever talk

about him wanting you to take the name "Santana's Mexican Food" off Yucca Valley?

A Nothing, no.

Q Can you think of anything that you did or said that would have given your son Abelardo -- that you did or said that gave your son, Abelardo, that he, alone, had the right to the name "Santana's Mexican Food"?

A No.

MR. SANDSTRUM: I'm going to interpose an objection. It calls for a legal conclusion, lacks foundation, and it's compound.

BY MS. ARMENTA:

Q Did you ever intend to tell or suggest to Abelardo that he had the right to control the name "Santana's Mexican Food"?

A No.

Q Now, at some point you sold the Yucca Valley restaurant to someone, right?

A Yes, Arturo Castaneda.

Q If you could just describe generally how that transaction worked or was working.

A Yes, of course. He started to work there. He liked the business. I was going very often and I was very tired of going there, and I offered it to him, and I dealt with him, and we did the business.

Q Did you agree on a purchase price for the Yucca Valley business?

A Definitely.

Q Has Arturo Castaneda paid you the entirety of that purchase price?

A No. He's paying it in monthly payments.

Q Have you had any discussions with Arturo Castaneda concerning opening other restaurants by Arturo Castaneda using the name "Santana's Mexican Food"?

A Yes.

Q What kinds of discussions have you had with Arturo Castaneda concerning his opening of new restaurants?

A Well, he has opened. He has several restaurants. He tells me this and that, and I say good, very good, of course.

Q Have you been to Arturo Castaneda's restaurants, other than the Yucca Valley location?

A Yes.

Q Have you seen anything there in the way that Arturo Castaneda has operated those businesses with which you have disagreed?

MR. SANDSTRUM: Objection. Lacks foundation, vague and ambiguous.

THE WITNESS: Yes, I have gone with him to see the businesses, and I have gone by myself, and when there's

something that doesn't look very good, I talk to him, and he has heard me, and I feel he is handling the business well.

BY MS. ARMENTA:

Q So far, to the extent you've had any disagreements over the way that the Santana's Mexican Food restaurants have been run by Arturo Castaneda, you've been able to resolve those differences?

A Yes, there has been no problems.

Q Have you tasted the food at his restaurants?

A Yes, yes, all of it.

Q And have you looked at the menus at the restaurants?

A Yes.

MR. SANDSTRUM: Vague and ambiguous. We're talking about which restaurants now? All of them?

THE WITNESS: All of them.

BY MS. ARMENTA:

Q And have you --

A Except for two.

Q Do you know which two?

A One is in Pomona, and the other one is in Corona. I don't remember.

Q Of the restaurants that you have been to, you've actually gone inside the restaurant?

A Of course, kitchen and everything, everything, everything, rest rooms and everything.

Q What was your purpose in going into all parts of the restaurant, including the kitchen and the bathrooms and everything?

MR. SANDSTRUM: I just want to object. Vague as to time, and we're covering a long period of time for many, many years. I don't think the record is clear.

THE WITNESS: When we did the business operation, I told him that I was going to have the right to see the businesses, and I have done it.

BY MS. ARMENTA:

Q That was my next question, which was, since the time you sold Yucca Valley to Arturo Castaneda and he has opened other restaurants, have you exercised your right to inspect those businesses?

A Yes.

Q And have you exercised -- do you believe you have any other rights like to talk to Arturo Castaneda if you disagree with something he's doing there?

A We have disagreed, and we agree.

THE INTERPRETER: Correction. "We have been in disagreement, but eventually we get to agree."

BY MS. ARMENTA:

Q Do you have a memory of the time the phrase "Es

Muy Bueno" was first put on the exterior of the Yucca Valley restaurant?

A The date, no, but it was very recent when we changed names. There's no date.

Q Do you have any memory of when the triangles were made that are on the sign of any of the restaurants?

A Well, it was around the time that the name was changed, right? Yes, yeah, I do remember more or less, but exactly, no, no, no. Dates, no.

Q Has your son, Abelardo, come to you in the last year and asked you to give him your rights to the name "Santana's"?

MR. SANDSTRUM: Object. It assumes facts not in evidence, calls for a legal conclusion.

BY MS. ARMENTA:

Q You can answer.

A Can I answer? Yes, yes, he has come to see me, Abelardo, several times, but I don't -- I can't do anything because I already sold.

MR. SANDSTRUM: I want to quickly object. We're getting into the realm of confidential -- maybe settlement communications that are privileged, and if these are settlement communications, they're not relevant. It sounds like if they were conversations, they're confidential settlement communications and not admissible in a hearing

such as this, so I want to move to strike the witness' answer.

MS. ARMENTA: Or they may be admissions.

Q When was the last time -- strike that. I don't want to use the dates.

Tell me the general nature of the discussions that you just said Abelardo had with you about the name "Santana's."

MR. SANDSTRUM: To the extent Mr. Abelardo Santana had any settlement conversations with the deponent, the witness here, concerning the resolution of the Trademark Office proceedings or the Federal Court proceedings, they're protected confidential settlement communications and they're inadmissible.

MS. ARMENTA: Your objection is noted.

MR. SANDSTRUM: And counsel knows that.

MS. ARMENTA: The objection is either overruled or sustained, it's not for us to decide.

MR. SANDSTRUM: I know what you're doing. You want the TTAB to review it.

MS. ARMENTA: Of course, that's their job.

MR. SANDSTRUM: If you want to do that --

MS. ARMENTA: I'm not going to not elicit testimony because you made an objection. They can rule on that.

MR. SANDSTRUM: They will, and I'll win.

BY MS. ARMENTA:

Q Mr. Santana, do you have the question in mind?

A The question is did Abelardo go to talk to me? He did go, but -- and he has gone several times, but the problem is that I cannot retrieve the rights from somebody that I already sold to. What can I do?

Q Is that what Abelardo was asking you to do?

MR. SANDSTRUM: Objection. Calls for a confidential settlement communication, lacks foundation, it's irrelevant.

THE WITNESS: Practically, if I could, we wouldn't have these problems but, unfortunately, I had already sold, I had already sold.

MR. SANDSTRUM: I move to strike the witness' testimony.

BY MS. ARMENTA:

Q What was it that Abelardo was asking you for?

MR. SANDSTRUM: Asked and answered, same objections, and I'll move to strike the witness' answer.

THE WITNESS: For me to give him the name.

BY MS. ARMENTA:

Q When you say "the name," do you mean --

A And for me to take away the name from the rest, the others.

MR. SANDSTRUM: Move to strike the witness' testimony

based on the prior objections I asserted.
BY MS. ARMENTA:
Q Do you believe that you have -- strike that.
Did you ever have any discussions along those lines with Abelardo's ex-wife, Claudia Vallarta-Santana?
MR. SANDSTRUM: I'm going to insert the same objections, calls for confidential settlement communication, lacks foundation, it's irrelevant, and exclude under Evidence Code 403 and move to strike the witness' answer.
BY MS. ARMENTA:
Q You can answer the question.
A What do I answer?
MS. ARMENTA: We'll note the same objections on the record.
MR. SANDSTRUM: And the motion to strike.
MS. ARMENTA: And the motion to strike.
Q But the question is, did you have any of those discussions like you described with Abelardo with Claudia?
A No, not with Claudia.
Q Only with Abelardo?
A Uh-huh, yes.
MR. SANDSTRUM: We have a standing objection on this?
MS. ARMENTA: Sure.
Q After you delivered the Rosecrans restaurant to

Abelardo, did Abelardo ever control the way in which you were running the Yucca Valley restaurant?

MR. SANDSTRUM: Can you read that back? I didn't get a chance to hear it.

(The record was read.)

THE WITNESS: Control?

BY MS. ARMENTA:

Q Yes, control.

A No, no.

Q After you delivered the Rosecrans restaurant to Abelardo and you continued to own the Yucca Valley restaurant, did Abelardo control either your recipes or your menus at the Yucca Valley restaurant?

A No.

Q After you delivered the Rosecrans restaurant to Abelardo and you continued to own the Yucca Valley restaurant, did Abelardo or his wife, Claudia, control the decor or the signage associated with the Yucca Valley restaurant?

A I don't remember that, no.

Q Did Abelardo or Claudia have any input -- participation -- did they have any participation in your purchase of radio advertising for the Yucca Valley Santana's Mexican Food?

A No.

Q Did Abelardo or Claudia at that time have any participation in whether or not you placed listings or ads in the Yellow Pages?

MR. SANDSTRUM: I'm just going to object, vague as to what time period we're talking about.

MS. ARMENTA: Same time period.

MR. SANDSTRUM: Same time period as what? You said after the transfer. When is that?

MS. ARMENTA: Okay.

Q At any time in your lifetime has Abelardo or Claudia controlled how you have run any of your restaurants?

MR. SANDSTRUM: Objection as to what restaurants we're talking about. Vague and ambiguous.

MS. ARMENTA: I'm talking about Yucca Valley first.

THE WITNESS: In Yucca Valley, no. Possibly here, when they were here, they used to be in charge of doing things, see.

BY MS. ARMENTA:

Q Sure. That's when they were working at the Rosecrans restaurant, right?

A Abelardo, yes, in Point Loma, possibly, possibly.

Q At any time did Abelardo or Claudia control any part of your operations at the Yucca Valley restaurant?

A No, no, no, at all.

Q Based on your agreement with Arturo Castaneda, do you believe that you have the right to ask him to remove the name "Santana's Mexican Food" from his restaurants if you reach a disagreement that is so big that you cannot resolve it that has to do with the Santana's Mexican Food restaurants?

MR. SANDSTRUM: I'm going to object, lacks foundation, calls for speculation, it's compound.

THE WITNESS: Can I answer now?

MR. SANDSTRUM: No. I'm thinking about the question. Go ahead.

THE WITNESS: Can you repeat it again?

(The record was read.)

MS. ARMENTA: Noting the same objections.

THE WITNESS: You're talking about the restaurants of Arturo Castaneda?

BY MS. ARMENTA:

Q Only Arturo Castaneda.

A Well, it depends on what happens, see, and the attorneys will have to say it because -- well, the attorneys are the ones that are going to finish up because I don't know the law, see. That's all.

Q What participation have you had, if any, in the selection of locations where Arturo Castaneda has opened Santana's Mexican Food restaurants?

A None. He gives me the payment, uh-huh, every 30 days.

Q But you go and you inspect the restaurants?

MR. SANDSTRUM: Vague as to time and calls for speculation.

THE WITNESS: I have the right.

MR. SANDSTRUM: And lacks foundation.

MS. ARMENTA: Translate what he said, please. Did you?

THE INTERPRETER: I did. "I have the right," he said.

MR. SANDSTRUM: Ms. Armenta, when you get a chance, I need to use the restroom.

MS. ARMENTA: Let's take a break then.

(A recess was taken.)

MS. ARMENTA: Let's go back on the record.

Q I want to go back because I was a little bit confused about your answers.

What rights do you have in connection with the name "Santana's" with respect to Arturo Castaneda's restaurants?

MR. SANDSTRUM: Objection. Calls for a legal conclusion.

THE WITNESS: Well, the right that is -- the name, right?

BY MS. ARMENTA:

Q Do you feel that you have the right to remove the name "Santana's" from Arturo Castaneda's restaurants if you reach some sort of significant disagreement?

MR. SANDSTRUM: Objection. I think the question is irrelevant as to what he feels.

THE WITNESS: Yes, I do have the right.

BY MS. ARMENTA:

Q What about with respect to Arturo Santana's restaurants?

A Well, I think it's also Santana's.

Q What about with respect to the restaurants of Claudia and Abelardo that have the name "Santana's"?

MR. SANDSTRUM: Objection. Lacks foundation and calls for a legal conclusion.

THE WITNESS: They're also Santana's. I also have the right.

BY MS. ARMENTA:

Q Why do you feel that you have the right to decide who uses the name "Santana's"?

MR. SANDSTRUM: Objection. Irrelevant.

THE WITNESS: Well, I'm the founder of the name and the long-time right automatically gives it value and makes me owner.

BY MS. ARMENTA:

Q Have you to date been satisfied with the way each

of these three groups, Arturo Santana, Arturo Castaneda and Abelardo and his wife, have run the restaurants that use the name "Santana's"?

MR. SANDSTRUM: Lacks foundation, calls for speculation.

THE WITNESS: Very much in agreement.

MS. ARMENTA: I have no further questions.

MR. SANDSTRUM: I wouldn't have taken a break then.

MS. ARMENTA: If you want to take another break, that's fine.

MR. SANDSTRUM: Yeah, let's take another break.

(A recess was taken.)

CROSS-EXAMINATION

BY MR. SANDSTRUM:

Q Good evening, Mr. Santana Gallego, my name is Mike Sandstrum, and I represent Santanas Grill, Inc. in this matter before the Trademark Office.

Do you speak English very well?

MS. ARMENTA: Objection. Vague.

THE WITNESS: No.

BY MR. SANDSTRUM:

Q Do you speak -- can you read English very well?

A No, no, no, no.

MS. ARMENTA: Same objection.

BY MR. SANDSTRUM:

Q Where do you presently reside?

A In Tecate, Baja California, Mexico.

Q Do you currently own any Mexican restaurants?

A No. Right now owner of a restaurant? No.

Q When was the last time you owned a Mexican restaurant?

A The last time? The date? Can I ask the date?

Q Approximate date is fine, approximate year, or the name of the restaurant.

A Santana's Mexican Food in Yucca Valley.

Q And that is the restaurant you testified earlier that you sold to Arturo Castaneda, correct?

A Yes.

Q In connection with that restaurant, you received money for that restaurant and in exchange you sold Arturo Castaneda the property and the building upon which the Yucca Valley restaurant is located, correct?

A Yes, I sold it to him in monthly payments -- in payments.

Q How much was the purchase price?

A $1,080,000.

Q So the purchase price, just to make sure I'm clear, is 1,080,000 American dollars, correct?

A American, yes, dollars.

Q How much do you receive monthly for the installment?
A He gives me $3,000 monthly.
Q And that has occurred since the time that he bought the restaurant from you, correct?
A (No audible response).
Q Do you know how much longer he has to pay you until he's paid you off?
A Several more years.
Q This sale of the Yucca Valley restaurant, was there a writing, a Purchase and Sale Agreement?
A Absolutely, yes.
Q Was it in handwriting or was it printed like on a typewriter or computer?
A A notary public made it.
Q In handwriting?
A No. In the typewriter.
Q Have you ever produced that writing to anyone, including your attorney?
A No, no, no.
Q Have you ever been asked by anyone, including your attorney, to produce that writing?
A Nobody has asked me for it.
Q Let's go over the terms of that Purchase Agreement.

First, did you sign that Purchase Agreement?

A I signed it and my wife signed it.

Q Who else signed it?

A Only.

Q Arturo Castaneda?

A Oh, yes.

Q Why did your wife sign the Purchase and Sale Agreement? Was she an owner of the Yucca Valley restaurant?

A We are married, she had to sign.

Q Who told you she had to sign?

A The notary that prepared the paperwork.

Q Anybody else?

A No, no, I don't know.

Q Do you recall the date, the approximate date or year, that this agreement was signed?

A No, no, I don't remember.

Q Was it before the year 2000?

A Oh, yes, before 2000, yes.

Q So as I understand from your testimony, Arturo Castaneda on an installment basis purchased the Yucca Valley restaurant, property, building for $1,080,000, correct?

A $1,080,000.

Q And the monthly installments for that purchase

price is $3,000 a month, correct, up until the time it's paid off, correct?

A Yes.

Q Besides those terms, in exchange for the $1,080,000, what did Arturo Castaneda receive besides the property and the building?

THE INTERPRETER: Excuse me, are you saying, "the property and the building"?

MR. SANDSTRUM: Yes.

THE WITNESS: He received the lot, the property, the building and the restaurant working.

BY MR. SANDSTRUM:

Q Anything else?

A A pickup, a truck dually.

Q Anything else?

A What else? I don't remember, no.

Q Did you sell Arturo Castaneda the name that was being used on the Yucca Valley restaurant, "Santana's Mexican Food"?

A No, that's not specified.

Q It's not in the Purchase Agreement?

A No. The name was not mentioned.

Q So nowhere -- let me ask this question -- "the name was not mentioned" was his answer?

A No, no.

Q How long, how many pages was the Purchase Agreement?

A I don't remember.

Q Was it more than 10 pages?

A I don't know.

Q Do you have an estimate if it was over 10, under 20 pages?

A More or less you could say 10, but I don't remember.

Q Do you know who drafted the Purchase Agreement, who created it?

A I know who it is, where he is, but I don't know his name. I would have to go see him.

Q Where is he?

A In Yucca Valley.

Q Was he an attorney?

A The attorney or notary public. I don't remember, but I know where he is and I can look for him if you need it.

Q That's all right. Thank you.

Can you recall any other material terms within the Purchase Agreement, other than the purchase price and the installment schedule?

MS. ARMENTA: Objection. Calls for a legal conclusion.

THE WITNESS: I don't remember anything like that.
BY MR. SANDSTRUM:
Q Do you recall any terms that were important to you -- strike that.
Do you recall any terms in the Purchase Agreement that were or are important to you other than the purchase price and the installment payment schedule?
A No, I don't remember anything like that.
Q Is there any other writing that specifies -- strike that question.
Is there any other writing that provides Arturo Castaneda with permission to use the name "Santana's Mexican Food" or "Santana's Mexican Food...Es Muy Bueno"?
A I don't remember.
Q So is it your recollection that -- strike that question.
You testified earlier that you had an agreement with Arturo Castaneda allowing him to use the name "Santana's Mexican Food."
Do you recall that testimony?
A Okay, let's see, what?
MR. SANDSTRUM: Can you read the question back?
(The record was read.)
THE WITNESS: I think so.
BY MR. SANDSTRUM:

Q You do or don't? Do you recall that testimony?
A For him to use it.
Q Let me ask this question: Do you have an agreement with Arturo Castaneda which permits him to use the name "Santana's Mexican Food"?
A Possibly, yes. The agreement is mainly oral.
Q If I understand your testimony, you have an oral understanding with Mr. Castaneda concerning his ability to use the name "Santana's Mexican Food" on his restaurants?
A There should be in the contract.
Q In what contract?
A The purchase -- the Sale Purchase Agreement.
Q I just thought you testified earlier that the use of the name "Santana's Mexican Food" was not included in the written purchase and sale contract. Isn't that true?
A Well, really in order for me to answer that, I have to bring the contract and look at it because I don't remember.
Q So you don't recall one way or the other right now whether or not the name "Santana's Mexican Food" is mentioned in that Purchase and Sale Agreement; is that correct? Let me strike that question. I don't like it.
You don't recall whether or not the written Purchase and Sale Agreement you just testified to has any provisions which permit Arturo Castaneda to use the name

"Santana's Mexican Food"; is that correct?

A I don't remember.

Q Do you recall under what conditions Arturo Castaneda is permitted to use the name "Santana's Mexican Food" in connection with his restaurants?

A Well, it's a condition more of a friend more than a business.

Q Does Arturo Castaneda have -- strike that.

Is it your understanding that Arturo Castaneda has the right to use the "Santana's Mexican Food" name on Mexican restaurants for the rest of his life?

A No, no, no.

Q Why not?

A Because I'm the owner, I'm the founder.

Q When you first opened the restaurant located at 1480 Rosecrans, San Diego, it was called, you testified, Alberto's, right?

A Alberto's.

Q And then you changed the name to Corona's, right?

A Yes.

Q Isn't it true you used similar menu items that Alberto's Mexican restaurants were using at the time?

THE INTERPRETER: Can you repeat that question?

MR. SANDSTRUM: Can you read it back?

(The record was read.)

THE WITNESS: Yes.

BY MR. SANDSTRUM:

Q How long did you do that for?

A How long? Let's see. I don't remember, six or seven months, because I had to change the name.

Q We're talking about the menu items, not the name -- let me strike that question.

After you opened up your first restaurant located at Rosecrans, correct, called Alberto's, did you use a similar or same menu item that was being used by Alberto's Mexican restaurant?

A Yes, yes, yes.

Q And for how long after you opened the Rosecrans restaurant did you use that menu?

A About six, seven months.

Q Isn't it true that the Rosecrans restaurant was the first Mexican restaurant that used the name "Santana's Mexican Food"? Isn't that right?

A That I know, yes.

Q Then sometime after that, isn't it true you opened a second Mexican restaurant in Yucca Valley; isn't that true?

A Yes.

Q And then you named that restaurant "Santana's Mexican Food," as well, correct?

A Well, later on, because first it was Corona.
Q Yes.
A In Yucca Valley.
Q Changed it?
A Santana's Mexican Food. First Corona's and then Santana's Mexican Food.
Q Yes, we're on the same page.
MS. ARMENTA: I don't think you're on the same page.
MR. SANDSTRUM: Counsel, that's improper.
MS. ARMENTA: You can't comment you're on the same page. You're misleading the witness.
MR. SANDSTRUM: I'm asking simple questions, Counsel.
Q Prior to transferring the Rosecrans restaurant to your son, Abelardo Santana, isn't it true he worked as a restaurant manager at that restaurant?
A Again, please.
MR. SANDSTRUM: Read the question back, please.
(The record was read.)
THE WITNESS: Yes, he was, I think so, I think so.
BY MR. SANDSTRUM:
Q And during the time he was working as a restaurant manager at the Rosecrans restaurant before you transferred ownership to him, you were working in Mexico at the gravel plant business?
A I, yes.

Q Isn't it true that Abelardo Santana, your son, while you were working at the gravel plant loaned you money for that business?

A Well, he has already told me several times because another son says that he also lent me money, but I don't remember, but that's not a problem.

Q Why isn't it a problem?

A Because he has the business and he's working in it.

Q We're going to go back to the time you transferred ownership to Abelardo Santana.

A Again.

Q Well, isn't it true that in the early 1990s you transferred ownership to Abelardo Santana and Claudia Santana with respect to the Rosecrans restaurant?

A I left him the business, and they did all the papers, and then if there was anything, any paper that had to be signed, I signed it, because I was leaving it to him.

Q And you were going to Mexico?

A I was already there.

Q And how long after you transferred ownership of the Rosecrans restaurant were you in Mexico?

MS. ARMENTA: Objection. Vague.

THE WITNESS: How long?

BY MR. SANDSTRUM:

Q How many years?
A I don't know, three or four years.
Q And during that time period who was running the Yucca Valley restaurant?
A I had people that stayed there.
Q Who are they or were they?
A Well, a family by the name of Presidio, a cousin, Blanca Santana, Arturo, Arturo, Arturo, my son, uh-huh. Abelardo went to help me for a few days, yes, and I had different people that helped me.
Q Just to make sure I'm clear because I don't think I am, just going back when you transferred ownership of the Rosecrans restaurant, that transfer was both to Abelardo Santana and his wife at the time, Claudia Vallarta-Santana, correct?
MS. ARMENTA: Objection. Asked and answered.
THE WITNESS: According to me, I transferred it to Abelardo, but then that's their problem.
BY MR. SANDSTRUM:
Q Do you recall submitting a declaration to the United States Trademark Office in March of 2004 wherein you declared that you provided the Rosecrans restaurant to both Abelardo Santana Lee and Claudia Vallarta-Santana? Do you recall that declaration?
A Well, it's possible. It's possible because it

was his wife, it's his wife, it was his wife. It was the same thing.

Q I just want to make sure the record is clear.

Do you recall at the time of the transfer of the Rosecrans restaurant that you signed a document called "Report and Change of Ownership" whereby Claudia and Abelardo Santana were added as partners, along with you, with respect to the Rosecrans restaurant?

Do you recall that?

A As partners?

Q As partners.

A No, no, I remember that I signed everything that they wanted, but not partners, no, not me. I wasn't there. I don't remember that.

Q Isn't it, in fact, true, you didn't give the Rosecrans restaurant to Abelardo Santana and Claudia Santana, you sold them that restaurant for a $20,000-or-so interest in Abelardo's interest in an apartment complex in Tecate, Mexico that was Abelardo's? Isn't it true that he gave that you interest?

A It could have been to my wife, not me, uh-huh, possibly, to my wife.

Q Didn't you at one point have an interest in a six-unit apartment complex located in Tecate, Mexico? Isn't that true?

A No, not me.
Q So it's your testimony that Abelardo Santana gave your wife his interest in the Tecate, Mexico apartment complex?
MS. ARMENTA: Objection. Misstates the witness' testimony.
BY MR. SANDSTRUM:
Q You can answer the question.
A Actually, in those apartments, I didn't really notice that, who was who. No, I don't remember.
Q Would Benito Santana, your son, have a better understanding of that?
A Benito, yes, he had something there.
Q What was his involvement with that project?
A I really wouldn't know.
Q Do you recall if he was the general contractor or builder of that apartment complex?
A He was the contractor, yes.
Q Do you recall that Abelardo Santana and Pedro Santana were 50/50 partners in that project?
A Possibly.
Q Do you know, "yes" or "no"?
A No, no. I have to ask my wife about it.
Q Isn't it true that Abelardo Santana forgave a $20,000 debt that you owed him in exchange for purchasing

the Rosecrans restaurant?

A He gave me $20,000?

Q In exchange for the transfer of that Rosecrans restaurant, isn't it true that he forgave a debt that you owed him in the approximate amount of $20,000?

A I don't remember. The one that is going to tell me all this is my wife because she has to have something, yeah, if there's something.

Q When you transferred the Rosecrans restaurant to Abelardo Santana and Claudia Santana, you transferred -- what exactly did you give them, the building? The property? A lease?

A The lease and the business running.

Q Isn't it true that Abelardo Santana paid you approximately $40,000 in value for the Rosecrans restaurant?

A That's what I don't remember. See, when I owe, I forget. Very bad.

Q That's a good memory. I do too.

Do you know who owns the six-unit apartment complex that was built by Benito Santana, your son, in Tecate, Mexico presently?

MS. ARMENTA: Objection. Vague. The property hasn't even been identified.

THE WITNESS: My wife gave them to Benito.

BY MR. SANDSTRUM:

Q If I understand your testimony -- your wife's name is Norma, correct?

A Yes.

Q And she gave the apartment complex to Benito?

A That's the way I understand it.

Q Or did she just give property to --

A No, everything.

Q At the time you transferred the Rosecrans restaurant to Abelardo and Claudia Santana, you never told them that you were keeping any rights in the name "Santana's Mexican Food," did you?

MS. ARMENTA: Objection. Misleading.

THE WITNESS: No, we never took that into consideration.

BY MR. SANDSTRUM:

Q Isn't it true at the time Abelardo and Claudia Santana took control over the Rosecrans restaurant, that you no longer had any control or authority how they operated that restaurant?

A Nothing.

Q Isn't it true that Abelardo and Claudia Santana -- strike that question.

Isn't it true you have no say over how Claudia and Abelardo Santana or their corporation conducted

marketing efforts or advertising for their restaurants? Isn't that true?

A That I have some right of telling them something? No, nothing.

Q How many times in the past year have you visited the Rosecrans restaurant?

A About three times.

Q What was your purpose?

A To go see Abelardo.

Q Any other purpose?

A No.

Q Did you see Abelardo when you went there?

A Yes, yes, yes.

Q When was the last time you visited one of Abelardo and Claudia's other restaurants, let's say, the Morena restaurant located on Morena Boulevard?

A No, I don't remember. It's been a long time.

Q How about their other restaurant on Washington Street?

A No. Point Loma, that's it.

Q That's the last one?

A About a month ago, month and a half ago I was with him.

Q So within the last year, the Point Loma or the Rosecrans restaurant, that's the only restaurant you

visited out of the six restaurants that Abelardo and Claudia -- that the corporation owned?

A I know them all, I think.

Q Are you aware of how much money in advertising that Abelardo and Claudia or through their corporation have spent over the last 15 years?

A No, no, no, I have no idea.

Q As you sit here today, do you know -- are you familiar with their menu items that they offer at their six restaurants?

A Not very well. I have seen them just like that, yeah.

Q Do you recall, as you sit here right now, what their menus look like for their six restaurants, colors, layout of the menu?

A No. At this moment, I don't remember, no.

Q Are you aware presently what ingredients that Abelardo and Claudia Santana are using in the California Burrito that they offer for sale?

A Yes, of course. I know the food.

Q But do you know exactly what ingredients Abelardo and Claudia Santana put into their California Burrito which they offer for sale at their six restaurants?

A Yes, of course.

Q And what is it?

A Meat, potatoes, vegetables and American cheese.

Q Do you have any understanding -- strike that question.

Isn't it true that Claudia Santana --

THE INTERPRETER: You know what, the interpreter wants to make -- give you an explanation.

MR. SANDSTRUM: Okay.

THE INTERPRETER: I said "vegetables." Now, the word he used includes tomato and -- I think, several vegetables, like tomato, onion and probably something else. I don't know. I'm not in the business.

MR. SANDSTRUM: Let's clarify that.

Q You testified that it's your understanding that Claudia and Abelardo utilize several vegetable ingredients in the California Burrito.

Do you know what those ingredients are?

A Tomato, onion and pepper, chili.

Q When is the last time you purchased a California Burrito from one of their restaurants?

A Never. I have eaten them, but I have never bought them.

Q When is the last time you've eaten a California Burrito at one of their restaurants?

A This morning at Arturo's restaurant.

Q How about Abelardo or Claudia's restaurant?

A About a month and a half ago I ate there.
Q What kind of chili do they put in their California Burrito? How is it made?
A It's like a salsa and pico de gallo.
MR. SANDSTRUM: I'm going to mark as Respondent's Exhibit 6 a document entitled "Service Mark Principal Register" with a registration No. 2,682,978.
(Exhibit R-6 was marked for identification.)
BY MR. SANDSTRUM:
Q Isn't it true that Claudia Santana created the logo you see on Respondent's Exhibit 6?
MS. ARMENTA: Objection. Lacks foundation, calls for speculation.
MR. SANDSTRUM: Let me start over.
Q Are you familiar with that symbol located on --
A According to me, this started in Yucca Valley.
Q So it's your testimony that Claudia did not create the triangle design around the name "Santana's Mexican Food," is that your testimony?
A Benito did this.
Q So it's your belief that Benito created the triangle, saw-toothed pattern that is sandwiched between "Santana's Mexican Food," correct?
A According to me, yes, according to me.
Q What do you base that belief on?

A I remember when we were making it in Yucca Valley.

Q Making what?

A Those signs.

Q By "we," are you referring to Benny or Benito?

A Making it, I was helping him, Benito.

Q Besides making this symbol that is shown on Respondent's Exhibit 6, how do you know that Benny Santana created the symbol shown on Respondent's Exhibit 6, which is the subject of registration 2,682,978?

A He went to help us to decorate Yucca Valley.

Q Did Benny tell you he created this symbol, he designed it?

A I understand that he did it, yes.

Q But did Benny tell you he designed this symbol?

A No. I understand that I saw him.

Q Saw him build it?

A I helped him.

Q But did he tell you he was actually the first one to invent or design this symbol on Respondent's Exhibit 6?

A According to me, yes.

Q Do you recall what Benny told you about that?

A No, I don't remember. I remember we made it, and then he put it on the wall.

Q So it's possible that Claudia created that

symbol, isn't it?

A I'm not sure.

Q Isn't it true that before Abelardo Santana filed for three trademark registrations, service mark registrations, he told you that he was going to do that? Isn't that true?

A He told me.

Q He did tell you before?

A Yes.

Q And you didn't object, did you?

A No. He was going to do it anyway because I had already come to an agreement when I realized it with Arturo Castaneda.

Q Is it your belief you have the right to terminate or to stop Arturo Castaneda from using the Santana's name if he opened a restaurant near one of your sons' restaurants in San Diego?

A I think so. Yes, of course.

Q What do you base that on?

A The registered name because of time, rights or age. Rights gives me the power, isn't it, no?

Q When you transferred the Rosecrans restaurant to Abelardo Santana and Claudia Santana, Abelardo was already trained in how to manage that store; isn't that true?

A Yes.

Q Isn't it true that Abelardo Santana had been working at the Rosecrans restaurant from the time he was 17 or 18 years old up until the time that you transferred ownership to him of the Rosecrans restaurant?

A Every once in a while, yes, he would help us a lot.

Q Isn't it true that you never owned a restaurant using the name "Santanas Mexican Grill"?

A No, not me. Arturo.

Q Isn't it true that Abelardo Santana created the name "Santanas Mexican Grill" and instructed his brother, Arturo Santana Lee, to use it at the El Cajon restaurant?

MS. ARMENTA: Objection. Compound, calls for speculation, lacks foundation.

BY MR. SANDSTRUM:

Q To the extent you know.

A I did not participate. I didn't notice anything.

Q Do you have an understanding whether or not Abelardo Santana Lee made up the Santanas Mexican Grill name?

MS. ARMENTA: Same objection.

THE WITNESS: I didn't notice anything. They just did it.

BY MR. SANDSTRUM:

Q So you don't know who created or made up

"Santana's Mexican Grill"; isn't that true?

A No, not I.

Q In fact, you've never objected to Abelardo's use of the Santana's Mexican Food name until you filed your petition to cancel the registrations, correct?

A I have never opposed.

Q Well, you're aware you filed a petition to cancel three service mark registrations, correct?

MS. ARMENTA: I object as misleading the witness. Objecting to using the name is not the same as filing a cancellation action for registration.

MR. SANDSTRUM: You don't have to do a speaking objection.

MS. ARMENTA: I just did.

MR. SANDSTRUM: I know. That's why I say you don't have to.

MS. ARMENTA: Thank you.

MR. SANDSTRUM: You know it's improper.

MS. ARMENTA: So my objection is that counsel was misleading the witness.

MR. SANDSTRUM: I'm not trying. I'm trying to get clear testimony. It's been very hard.

Q You're aware you filed a petition to cancel three trademark registrations owned by Santana's Grill, which is your son's corporation, correct?

A Yes, it was done in Los Angeles.
Q But you're aware you filed those three petitions to cancel, correct?
MS. ARMENTA: Objection. Asked and answered.
You can answer it again, Mr. Gallego.
BY MR. SANDSTRUM:
Q "Yes"?
A Of cancelling them?
Q Yes.
A Yes, we filled out some papers, yes, because they wanted to take the name away from us.
Q And prior to filing those petitions to cancel, you never objected to Abelardo Santana's use of the Santana's Mexican Food name, did you?
A No.
Q And you never objected to his use of the Santanas Mexican Grill name, did you?
A No, no.
Q Do you recall, as you sit here today, how many restaurants your son, Abelardo Santana, through his corporation owns?
A It seems to me that he has six. I don't know. I'm not sure.
Q Do you recall how many restaurants, as you sit here today, Arturo Castaneda owns bearing the name

"Santana's Mexican Food"?

A Eight.

Q When was the last restaurant that Arturo Castaneda opened with the name "Santana's Mexican Food"?

MS. ARMENTA: Did you say "when" or "where"?

MR. SANDSTRUM: When.

THE WITNESS: I'll tell you right now. It was not in the area of San Diego. It's outside. Can I ask?

MR. SANDSTRUM: No, that's fine. If you don't remember, you don't remember.

Q Did Arturo Castaneda ask you for permission to open a restaurant at that last location?

A Yes.

Q And what did you say?

A "Yes."

Q Had you said "no," would that have stopped Arturo Castaneda from opening a restaurant at that location?

A I think so.

Q Going back to Respondent's Exhibit 6, which is the service mark registration for Santana's Mexican Food and design, do you know who created -- who designed this entire symbol shown on Respondent's Exhibit 6?

A According to my memory, I insist that it was done in Yucca Valley.

Q The entire design?

A Yes.
Q And by who?
A Benito -- it was Benito, Arturo and I, according to me.
Q That's your understanding, correct?
A That's what I remember.
Q It's true you didn't create the name "Santanas Mexican Grill," correct?
MS. ARMENTA: Objection. Asked and answered.
THE WITNESS: No, not I.
BY MR. SANDSTRUM:
Q You did not create it, correct?
MS. ARMENTA: Same objection.
THE WITNESS: No.
BY MR. SANDSTRUM:
Q Have you been to in the last year, 2007, all eight of Arturo Castaneda's restaurants?
A Seven.
Q You've been to seven of them?
A Uh-huh.
Q When is the last time you were at the 29 Palms restaurant?
A About a month ago.
Q What was the purpose of going there?
A To see the business and talk to Arturo.

Q About what?
A About the businesses.
Q What about the businesses?
A Well, how they were. Somebody was telling me they were not being taken care of properly, so I went to 29 -- the three places I saw them, 29, Joshua Tree and Yucca Valley.
Q What did somebody tell you was wrong with some of these restaurants or all of these restaurants?
A No, no, that two of the restaurants were very badly taken care of like in hygiene-wise, but when I went, everything was fine, everything was nice and clean.
Q Who told you that?
A A worker.
Q A manager? A worker? A cashier?
A A guy that had been a worker.
Q Are you familiar with how Arturo Castaneda's menus appear, what they look like?
A Yes, of course. Yes, I do know them.
Q Do you know what colors?
A Well, they have yellow, different -- yellow, green, depending what you're looking at, the plates.
Q How often do you speak with Arturo Castaneda in a month?
A Two, three times a month, sometimes more.

Q What do you guys speak about?
A Well, how is it going, what future he has, details about the business.
Q Have you ever talked about increasing the installment payments on the Purchase Agreement?
A Again, please.
Q Have you ever talked about increasing the $3,000 you get a month on the Purchase and Sale Agreement as Mr. Castaneda opens more restaurants?
A We have talked a little.
Q What happened?
A Well, we're still in talks.
Q Do you get any money from any of the other restaurants of Mr. Castaneda, besides Yucca Valley?
A No, not yet.
Q Are you in negotiations with Mr. Castaneda?
A We are in negotiations.
Q What are you guys talking about?
A Well, about a monthly installment.
Q For each restaurant?
A For each restaurant.
Q In exchange, what does Mr. Castaneda get?
A The name, the name.
Q And by "the name," you mean what name?
A Santana's Mexican Food.

Q To your understanding, is Mr. Arturo Castaneda permitted to use the name "Santanas Mexican Grill" on any of his restaurants?

A "Mexican Grill"?

Q Is he able to use that name?

A No, I don't know. I don't think so.

Q Are you familiar with the menu being utilized by your son at his restaurants, your son, Abelardo Santana, presently?

A I was looking at it the other day, but I don't remember.

Q Okay. Do you have an understanding if he uses the same menu, meaning the same menu -- a menu that looks the same, appears the same, in all six restaurants that he has?

A I have only seen the one in Point Loma, right? That's all.

Q Are you aware that his employees all wear standard uniforms?

A Yes.

Q Are you aware that Santana's has an advertising website?

A No.

Q Are you aware of what kind of promotional activities Abelardo Santana and Claudia Santana or through

their corporation have engaged in within the last five years?

A I know that they have done something, but I don't know what.

Q Do you know that the menu items on their current menu are similar to the ones that existed when you transferred the Rosecrans restaurant to Abelardo Santana and Claudia Santana?

A It's a very similar food.

Q Has Arturo Castaneda, to your knowledge, ever advertised under the name "Santanas Mexican Grill"?

A No.

Q How many restaurants does Arturo Santana Lee own?

A Two.

Q How about Pedro Santana?

A Two.

Q Where are Pedro's restaurants?

A El Cajon Boulevard in San Diego and University in San Diego, Avenue.

Q When is the last time you were at either of his restaurants?

A A week ago, I think, four days.

Q Which restaurant?

A El Cajon.

Q No, I'm saying Pedro Santana.

A El Cajon.
Q That's in El Cajon too?
A El Cajon Boulevard.
Q What was the purpose of visiting that restaurant?
A I come often to see him. The reason?
Q Yes, the reason.
A Well, he's also my son.
Q Just to say "hi" to your son?
A That's right.
Q Do you know -- do you have an understanding how often Arturo Santana Lee visited his El Cajon restaurant within the last year?
A Arturo Santana comes to his businesses two, three times a week.
Q How do you know that?
A Because he tells me, and he comes to my house and we talk.
Q I want to go back to Respondent's Exhibit 6 and just ask one more clarifying question.

You didn't create the symbol that is shown on registration 2,682,978, Respondent's Exhibit 6, correct?
A Well, Benito -- according to me --
Q No. Let me stop you real quick. I'm asking if you created this symbol located on Respondent's Exhibit 6, the whole symbol?

MS. ARMENTA: Asked and answered.

THE WITNESS: I understand that it was Benito.

BY MR. SANDSTRUM:

Q When Abelardo and Claudia Santana opened their restaurant on Midway Drive, San Diego -- do you know that restaurant?

A I was there once.

Q When they first opened it --

A I went by.

Q Were you there when they first opened or shortly thereafter?

A Later on.

Q How much later on?

A I don't remember. Not too long ago I was there, not too long ago I went by.

Q But when they first opened the Midway restaurant, and I'll represent to you it was in 1998, did you visit that restaurant?

A No.

Q When they first opened their restaurant on Washington Street in San Diego in 2003, did you visit that restaurant?

A Once.

Q Was that shortly after it opened or a long time after it opened?

A When more or less they had just opened it, I also went by.

Q When they first opened -- well, when they opened the restaurant located on Garnett Ave., San Diego, in 2004, did you visit that restaurant?

A No.

Q Have you ever visited that restaurant?

A I don't remember.

Q How many times have you visited the Morena Boulevard restaurant in San Marcos, California?

A Two or three times.

Q How many times have you visited the Midway Drive restaurant in San Diego?

A Several times.

Q More than 10? This is Midway. I thought you testified you were only there a couple times.

A Midway?

Q Are you familiar with that restaurant?

A I think it was several times.

MR. SANDSTRUM: Let's take a two-minute break.

(Whereupon the proceedings adjourned at 5:11 p.m.)

* * *

Declaration Under Penalty of Perjury

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

EXECUTED this_____day of_____, 20__, at_____, _____.
(city) (state)

_____
ARTURO SANTANA GALLEGO

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, LEXANN CHRISTY, CSR No. 7932, in and for the state of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were duly sworn; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript [ ] was [ ] was not requested.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: July 12, 2008

LEXANN CHRISTY
CSR NO. 7932

I, _____, a certified interpreter in and for the State of California, do hereby certify that I have read and translated this deposition to the deponent, _____, to the best of my ability.

I state so under penalty of perjury under the laws of the State of California.

Executed this _____ day of _____, 20___, at _____, California.

_____
Interpreter

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REPORTER'S CERTIFICATION OF CERTIFIED COPY

I, LEXANN CHRISTY, Certified Shorthand Reporter, Certificate No. 7932, for the State of California, hereby certify:

The foregoing is a true and correct copy of the original transcript of the proceeding taken before me as thereon stated.

Dated: July 12, 2006

LEXANN CHRISTY, CSR 7932

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Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,682,978
Registered Feb. 4, 2003

SERVICE MARK
PRINCIPAL REGISTER

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

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

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

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

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

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

JEFFERY COWARD, EXAMINING ATTORNEY

Respondent's Exhibit No. 6
Case No. 92043152
Gallego vs. Santana Grill
1 page

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CERTIFIED COPY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ARTURO SANTANA GALLEGO, Petitioner, vs. SANTANA'S GRILL, INC., Registrant.	)	Cancellation Nos. 92043152 (Consolidated) 92043160 92043175

V O L U M E II

DEPOSITION OF ARTURO SANTANA GALLEGO

JANUARY 31, 2008

Reported By: Lexann Christy
CSR No. 7932

File No.: 25634

ABRAMS, MAH & KAHN
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ARTURO SANTANA GALLEGO, Petitioner, vs. SANTANA'S GRILL, INC., Registrant.	)	Cancellation Nos. 92043152 (Consolidated) 92043160 92043175

Volume II of the Deposition of ARTURO SANTANA GALLEGO, taken on behalf of Petitioner, at Bremer Whyte Brown & O'Meara LLP, 550 West C Street, Suite 1450, San Diego, California, commencing at 9:13 a.m., on Thursday, January 31, 2008, before Lexann Christy, CSR No. 7932.

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Abelardo Santana
Claudia Vallarta-Santana
Arturo Castaneda

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ARTURO SANTANA GALLEGO VOLUME II		68	87, 96	94

E X H I B I T S

PETITIONER'S EXHIBIT	DESCRIPTION	PAGE
P-9	GTE Everything Pages Ad, 2 pages	89

RESPONDENT'S EXHIBIT	DESCRIPTION	PAGE
R-7	Fictitious Business Name Statement, 1 page	79

INSTRUCTIONS NOT TO ANSWER

(NONE)

INFORMATION REQUESTED

(NONE)

SAN DIEGO, CALIFORNIA, THURSDAY, JANUARY 31, 2008

9:13 a.m. - 10:34 a.m.

SILVIA SAN MARTIN,

an interpreter of the Spanish language, was duly sworn by the Certified Shorthand Reporter to interpret from English to Spanish and from Spanish to English the following proceedings:

ARTURO SANTANA GALLEGO,

called as a witness by and on behalf of the Petitioner, and having been placed under oath by the Certified Shorthand Reporter, was examined and testified as follows:

CROSS-EXAMINATION (CONTINUED)

BY MR. SANDSTRUM:

Q Good morning, Mr. Santana Gallego.

A Good morning.

Q This is day two of your testimony.

A Yes.

Q We're going to go over a few issues we discussed yesterday.

In connection with your sale of the Yucca Valley restaurant to Arturo Castaneda, do you recall how much Mr. Castaneda still owes you for that restaurant?

A No, I don't. It's been a long time.
Q Do you have an estimate how much he owes you?
A About 500. I don't know.
Q As part of that written sale agreement that you testified to yesterday, did that call for any interest payments on top of the purchase price?
A Everything is related.
Q Is there an interest provision?
A Everything, everything about the payment.
Q I understand that. Does the written Purchase Agreement require that Arturo Castaneda pay you interest on the purchase --
A It's already been calculated.
Q Do you know what that interest rate is?
A No, I don't remember. I don't remember.
Q Is it under 10 percent?
A Yes, yes, certainly, approximately.
Q That's fine. When Mr. Castaneda pays you the $3,000 monthly payment, do you give him any type of a receipt acknowledging that he has paid you?
A We are using the check.
Q So he pays you with a check?
A Everything.
Q And he pays the $3,000 monthly installment payment to you directly, correct?

A Directly.

Q Have you ever requested that he pay somebody else that $3,000 in any given month?

A No, no.

Q And I assume those payments are being reported on the U.S. federal and state income tax return?

A Definitely.

MS. ARMENTA: I'm going to object on the basis of taxpayer privacy, and I will ask the interpreter just to watch. I'll put my hand up if I'm going to make an objection, and if she could indicate that to the witness, as well, because if I get another question that I believe invades the witness' privacy or a privilege, I might instruct the witness not to answer the question.

MR. SANDSTRUM: It's very helpful when counsel needs to make an objection that we're given time to insert the objection, so I agree with counsel.

Q Is it your testimony that Arturo Castaneda has been making $3,000 monthly payments from the time he purchased the Yucca Valley restaurant to the present?

A That is correct.

Q Has he ever missed a payment?

A No.

Q Have you ever told him he didn't have to make a payment for any given month?

THE INTERPRETER: Say again, Counsel.

BY MR. SANDSTRUM:

Q Have you ever told him he did not have to make a payment for a certain month?

A No, all the time.

Q In connection with Arturo Castaneda's restaurants, is it your understanding that you have the final say as to where Mr. Castaneda can open a restaurant named "Santana's Mexican Food"?

A I have the last word.

Q And you have the final say as to what type of food that Mr. Castaneda can serve at restaurants that he names "Santana's Mexican Food," correct?

A Typically that is the case.

Q What do you mean by "typically that is the case"?

A The food is uniform everywhere.

Q But do you have the final say -- it's your understanding that you have the final say as to what type of food that Mr. Castaneda can serve at his restaurants named "Santana's Mexican Food," right?

A That is correct.

Q Is it also your understanding that you have the final say as to what logos Mr. Castaneda can use at his restaurants named "Santana's Mexican Food"?

A Santana's Mexican Food.

Q Can Mr. Castaneda use a logo at a restaurant named "Santana's Mexican Food" without your approval, any logo?

A No.

Q No, he can't use a logo without your approval?

A No.

Q Does Mr. Castaneda need your approval as to the appearance of his restaurants called "Santana's Mexican Food"?

A All the time.

Q Do you have the final say as to what menu items -- strike that question.

Do you have the final say as to what food items are listed on Mr. Castaneda's menus at all his restaurants named "Santana's Mexican Food"?

A It's the same thing everywhere, and we do the same thing all the time.

Q But do you have the final say as to what Mr. Castaneda puts on his menus?

A Yes, yes. We talk about that, me and him.

Q I know you talk about it, but do you have the final say --

A Yes, I do. Yes, I do.

Q Is it your understanding as part of Mr. Castaneda's ability to use the Santana's Mexican Food

name he must use the California Burrito as a centerpiece at his restaurants?

A Not especially.

Q So that's not one of the terms of your deal with Arturo Castaneda?

A Well, whatever it is, it is there. We have never talked about it, the use.

Q So you've never talked about the requirement that Mr. Castaneda use the California Burrito as a centerpiece at any of his restaurants called "Santana's Mexican Food"?

A No, because that is just one more thing, one more item.

Q So that's not one of your deal terms then?

A To respect the food, yes, that is a requirement.

Q Now, if Mr. Castaneda breaches any of the terms of the sale agreement for the Yucca Valley restaurant, is it your understanding that you have a right to take back the Yucca Valley restaurant, to take back ownership of the Yucca Valley restaurant?

A Yes.

Q Is it also your understanding if Mr. Castaneda doesn't follow your instructions regarding the type of food sold, quality of food, that you can make him stop using the Santana's Mexican Food name, correct?

A Yes, I would put it in writing, and then he would

take it off. That is the understanding.

MR. SANDSTRUM: Can you read the answer back?

(The record was read.)

BY MR. SANDSTRUM:

Q I'm not clear on your answer. Put what in writing?

A I would make the request in writing to him stating the reason why it was, and he would have to take it off.

Q Is there any document that evidences that you have the right to control how Mr. Castaneda runs his restaurants?

A We do have a piece of paper, uh-huh, yes.

Q What type of paper is that?

A It's an agreement that both of us did by which he needs to respect the operations, whatever operations take place there.

Q By "agreement" are you referring to the Purchase and Sale Agreement of the Yucca Valley restaurant?

A No, the agreement is regarding the meals.

Q Is there a written agreement regarding the meals?

A Yeah, there is one, yes.

Q And how many pages is it?

A It's like three pages. That would be it.

Q Is it typewritten or handwritten?

A Typewritten.
Q Is it signed by both you and Mr. Castaneda?
A Both.
Q I thought you testified yesterday that there was no such written agreement.
A There is a piece of paper, yes. There is a piece of paper. There is.
Q But didn't you testify yesterday there was no written agreement regarding the control over the restaurants relative to the type of food to be sold?
A I'm going to look for it, and I'm going to bring it.
Q Has anybody ever asked you to produce that agreement in connection with these proceedings?
MS. ARMENTA: I'll object to the extent that it invades an attorney-client privilege, and except for anything your attorneys may have told you, Mr. Santana Gallego, you can answer the question.
MR. SANDSTRUM: It's a "yes" or "no" answer.
MS. ARMENTA: It is "yes" or "no," excluding any communication with counsel.
MR. SANDSTRUM: Absolutely.
THE WITNESS: Say that again, please.
MR. SANDSTRUM: We just want a "yes" or "no" answer.
MS. ARMENTA: But I don't want you to consider

anything that I may have told you or any of your attorneys may have told you in responding to that question.

THE WITNESS: Very good.

BY MR. SANDSTRUM:

Q Has anybody asked you -- and you can have the same objection --

MS. ARMENTA: Except for your attorneys.

MR. SANDSTRUM: Well, if we do a document request, I think it's fair. I don't think it invades attorney-client privilege to ask for those documents.

MS. ARMENTA: You have a document request. You can show it to him and ask him if he's ever seen it before, but you can't ask him about conversations I've had with my client. So you can ask him except for his attorneys has anybody asked you.

MR. SANDSTRUM: I don't think "yes" or "no" is invading the privilege.

Are you going to instruct him not to answer?

MS. ARMENTA: No. I'm only going to instruct him not to answer based on anything I may have told him or he and I have discussed, but other than that, he's free to answer the question.

BY MR. SANDSTRUM:

Q Has anybody asked you to produce the Purchase and Sale Agreement for the Yucca Valley restaurant, "yes" or

"no"?

MS. ARMENTA: Same objections and same instruction.

THE WITNESS: No.

MR. SANDSTRUM: So the record is clear, the objection I understand from counsel is she's instructing the witness not to answer whether or not she asked the witness to produce that document.

MS. ARMENTA: I will just add that the witness has volunteered to look for it as he's sitting here today and locate it, and I will be happy to follow up with the witness and make sure that that occurs.

Although this is not a discovery deposition and there was no Motion to Compel ever brought in this case and discovery responses were given more than two years ago, I will still offer up that document if Mr. Santana Gallego can locate it, and I will represent that we have made efforts to locate it, and it has not yet been located.

BY MR. SANDSTRUM:

Q I'm going to ask the same question.

Has anybody asked you to produce the written agreement in connection with -- that apparently provides you with the right to control Mr. Castaneda's restaurants?

MR. SANDSTRUM: Subject to counsel's objection and instruction not to answer what she asked.

MS. ARMENTA: And the representation that if one

exists, we'll go outside of the discovery period, which has been closed for over a year, and produce it.

MR. SANDSTRUM: The discovery period has been closed, but if it should have been produced during the discovery period and it wasn't --

MS. ARMENTA: Then there should have been a Motion to Compel.

MR. SANDSTRUM: If no one represented it existed, how do you compel something if you don't know it exists?

MS. ARMENTA: Had you taken a single discovery deposition, you would know that, but there were no depositions taken by Respondent.

MR. SANDSTRUM: By former counsel, correct. And I also believe, if we want to be accurate, Mr. Santana Gallego was not willing to participate in a discovery deposition in this case.

MS. ARMENTA: That's actually not correct, and Mr. Castaneda is subject to the jurisdiction in the United States, and no discovery deposition was taken of him either, and Mr. Santana Gallego's deposition could have been taken under written questions as the rules provide for for foreign deponents, and even that attempt was not made.

So whether it's former counsel or not, I don't know if the registrant has a case for malpractice against his former counsel, but whatever the case is, nothing was

done.

MR. SANDSTRUM: We can stop with this diatribe of irrelevant statements, self-serving statements, I should say. Let's get back to the business we're supposed to be here for.

Q I'm going to show you Respondent's Exhibit 7, which I'll mark as Respondent's Exhibit No. 7, and I'll represent it's a Fictitious Business Name Statement for Santana's Mexican Food for the location 1480 Rosecrans Street, San Diego, California 92106.

(Exhibit R-7 was marked for identification.)

BY MR. SANDSTRUM:

Q Is that your signature right there?

A Yes.

Q I'll also represent the document reflects a date of March 14, 1988 down on Section 4 of that document.

MS. ARMENTA: I'd be happy to stipulate to the authenticity and admission of this document.

BY MR. SANDSTRUM:

Q Is it your understanding you have the final say as to the cleanliness of Mr. Castaneda's restaurants named "Santana's Mexican Food"?

A Yes.

Q So if he doesn't keep his restaurants in a clean state, you have the -- it's your understanding that you

have the right to stop Mr. Castaneda from using the "Santana's Mexican Food" name on his restaurants, correct?

A Yes, yes.

Q Going back to the issue of the California Burrito, it's your understanding and belief that you were the first person to ever create a burrito using potatoes inside?

MS. ARMENTA: Objection. Misstates the witness' testimony.

BY MR. SANDSTRUM:

Q Is it your understanding and belief that you were the first person to make a burrito that you call the California Burrito, correct?

A Yes.

Q And the California Burrito has meat and potatoes inside, correct, along with some other items?

A That is correct.

Q What do you base that belief on?

A May I answer with a full answer?

Q Of course.

A The meat went up in terms of price a lot, and it was so expensive that it was hardly a business anymore. And I remembered that my mother used to serve meat with potatoes and onions and so on to us, and then, of course --

THE REPORTER: I'm sorry?

THE INTERPRETER: Let me change that translation. "We will have more."

BY MR. SANDSTRUM:

Q I understand why you made the California Burrito, but what is the basis of your belief that you are the first person to have ever made a burrito that contains potatoes and meat?

A Well, the name is California Burrito because Americans eat a lot of potatoes.

Q How do you know another restaurant wasn't making a similar burrito in California, Northern California, Mexico, East Coast in the United States?

MS. ARMENTA: Objection. Calls for speculation.

MR. SANDSTRUM: You can answer the question

THE INTERPRETER: He didn't answer, Counsel.

THE WITNESS: Say that again.

BY MR. SANDSTRUM:

Q Do you know whether or not another restaurant prior to you making a California Burrito was making burritos that were similar to the California Burrito?

A No, I don't know if anybody has or not.

Q You don't know that because you didn't do any investigation --

A I did investigate that.

MS. ARMENTA: And I object to the interpreter's

interpretation, excuse me, but I believe -- let me have the reporter read back his last question.

MR. SANDSTRUM: Remember you are certifying this translation.

MS. ARMENTA: I can object and I can ask for corrections.

MR. SANDSTRUM: That's fine, but she's the interpreter here, and she's been certified.

MS. ARMENTA: That's why she needs to listen and we need to read it back.

(The record was read.)

MS. ARMENTA: Ms. Interpreter, I believe that he said "I don't know that anyone was making one," not "I don't know if anyone was making one," so my request is for clarification on that.

THE WITNESS: When I looked into it and we began making that burrito, nobody, nobody was aware of it, nobody was familiar with it.

BY MR. SANDSTRUM:

Q What do you base that belief on?

A Well, the little that I looked into it.

Q And tell me what you did to look into it.

A Well, the north of the U.S., there was nothing like it or on the East Coast or in California.

Q How do you know that?

A Well, I've been everywhere and asking all the way from here to Canada, Texas, New Mexico, Arizona, everywhere, no California Burrito.

Q So you traveled every city in California?

A No.

Q So it's possible people were making a similar burrito before?

MS. ARMENTA: Objection. Calls for speculation.

BY MR. SANDSTRUM:

Q Isn't it true that the second restaurant that you opened, the Yucca Valley restaurant, was opened December of 1988?

A Yes, I believe so.

MS. ARMENTA: Can I ask for clarification from the interpreter? Did he say that it opened as when it first opened or it was open in December of 1988 -- that it was then opened or it opened for the first time? You're just saying "open," so it's not clear to me.

THE INTERPRETER: Well, if you say that it opened or open the first time -- say the question again.

MS. ARMENTA: My question is, was the witness saying it was open in December '88 or it first opened for the first time in December of '88?

THE WITNESS: The dates I don't remember.

MS. ARMENTA: Thank you.

BY MR. SANDSTRUM:

Q Well, you just testified "yes" to the question that the Yucca Valley restaurant opened in December of 1988, correct?

A Possibly.

Q Besides the written sale agreement that you mentioned in your testimony and the written agreement regarding your ability to control the manner in which Mr. Castaneda runs his restaurants that you mentioned in some testimony, are there any other written or oral agreements that you have with Mr. Castaneda regarding Mr. Castaneda's restaurants?

A You need to say that again a little bit slower.

Q Besides the Yucca Valley Purchase and Sale Agreement, the agreement you mentioned today that you say gives you the right to control Mr. Castaneda's restaurants, besides those two agreements, are there any other agreements that you have with Mr. Castaneda regarding Mr. Castaneda's restaurants?

A I don't think so, no.

Q Do you recall answering what is called an interrogatory, a question, that was sent to your counsel in this proceeding, and when you responded that the first -- that the Yucca Valley restaurant first opened and used the "Santana's Mexican Food" name was in December of 1988? Do

you recall that?

A The same food, yes.

Q Do you recall that your response to a question was that the Yucca Valley restaurant opened in December of 1988?

A Do I remember?

Q Do you remember providing your counsel with information that the Yucca Valley restaurant first opened in December of 1988?

A I don't remember if that question was asked. Then yes, yes.

Q Do you recall responding to a question in these proceedings called an interrogatory that it was your belief that you began to use the "Santana's Mexican Food" name in 1987 or 1988, you weren't sure, in connection with the Rosecrans restaurant?

A Did I put the name "Santana" on that date, is that your question?

Q Yes, 1987, 1988.

A Yes.

Q So you weren't sure whether it's 1987 or 1988?

A No, no, I'm not sure, but it was in 1988.

Q Let me ask you another question on Respondent's Exhibit 7.

Do you recognize the handwriting, the printed

handwriting?

A The handwriting? It looks like my wife's.

Q That's Norma?

A Norma. I believe.

Q Does a written employee manual exist at Arturo Castaneda's restaurants?

MS. ARMENTA: Objection. Calls for speculation.

BY MR. SANDSTRUM:

Q If you know.

A For the meals, a manual for the meals?

Q An employee manual that outlines how the food is prepared, how employees treat customers.

A Yes, yes.

Q There is such an employee manual?

A Yes, yes, we got it.

Q Is that manual a manual you prepared and gave to Mr. Castaneda?

A I don't remember which inspector help us prepare it.

Q But was it Arturo Castaneda or somebody on his behalf who prepared that employee manual?

MS. ARMENTA: Objection. Asked and answered.

BY MR. SANDSTRUM:

Q You can answer the question.

A A work inspector or an insurance inspector, he

was the person that help us prepare that.

Q How many pages is that manual?

A It's one big piece of paper with everything.

Q How many pages?

A I think one or two. I don't remember. I really don't remember.

Q Did you approve the contents of that employee manual?

A No. We just left it like that, and we used it like that.

MR. SANDSTRUM: I'm done.

MS. ARMENTA: I need to take just a five-minute break to get something from my car.

(A recess was taken.)

REDIRECT EXAMINATION

BY MS. ARMENTA:

Q Good morning, Mr. Santana.

A Good morning.

Q I know that yesterday one of the things that you said was that dates were difficult for you to remember.

Do you feel any differently today about your memory about dates?

A Very difficult.

Q Now, you just testified when Mr. Sandstrum was

asking you questions, I think, that the Yucca Valley restaurant was first given the name "Santana's Mexican Food" around December '88.

MS. ARMENTA: Misstates the record.

BY MR. SANDSTRUM:

Q Well, let me ask you this: Can you state with specificity on what date Yucca Valley was named for the first time "Santana's Mexican Food"?

A No. How am I going to remember?

Q What do you remember about the time that Yucca Valley's name was changed to "Santana's Mexican Food"?

A I was requested to change the name, and I change it to name it "Santana."

Q Now, did you do that at a different time than you changed the Rosecrans location, or were those done at the same time?

A At the same time, the same thing.

Q So if someone told you that actually Rosecrans was named "Santana's Mexican Food" and six months or a year later Yucca Valley's name was changed to "Santana's Mexican Food," would that be true?

MR. SANDSTRUM: Lacks foundation, calls for speculation, it's vague and ambiguous.

BY MS. ARMENTA:

Q You can answer the question.

A I was requested to do that, and at the same time we were to take material from here to there and bringing material from there to here.

Q So was the Rosecrans name "Santana's Mexican Food" first or not?

MR. SANDSTRUM: Asked and answered many times.

THE WITNESS: At the same time.

BY MS. ARMENTA:

Q Now, when you were running Santana's Mexican Food in Yucca Valley, did you ever place any Yellow Page listings for that restaurant?

A Yeah, telephone guide, yes.

Q Let me show you and mark this as Petitioner's Exhibit 9.

(Exhibit P-9 was marked for identification.)

BY MS. ARMENTA:

Q I imagine you might not be able to recognize a telephone guide from over 10 years ago, but I'm going to show you this and just ask you a few things about the document and see if it helps refresh your recollection when the Yucca Valley restaurant was named "Santana's Mexican Food."

MR. SANDSTRUM: I'm going to have to object. It lacks foundation.

MS. ARMENTA: No problem.

Q Do you see this part here, this is the GTE Everything Pages? Is this one of the phone books that you advertised in?

A I think so. I think is the only one out there.

Q And in or about July of 1988 were you operating a restaurant in Yucca Valley?

A I think so. I think so.

Q And if you look at the second page at the bottom of the second column, the second-to-last entry where it says "Santana's Mexican Food," was this your address, 72183-29 Palms Highway, 29 Palms?

A Uh-huh, 29 Palms Highway.

Q That was your address then?

A The number I don't remember but --

Q The street you do?

A Uh-huh.

Q Do you remember the phone number?

A No, I don't even remember my own number.

Q Thank you very much.

Now, yesterday Mr. Sandstrum asked you some questions about the frequency with which you visit the restaurants of your sons and the restaurants of Arturo Castaneda.

Why do you go visit Arturo Castaneda's restaurants?

A Well, first of all, Arturo is not my son. My sons, well, the businesses, they are family businesses, they're perfectly familiar with them, and so they do take a very good care of the businesses, yes.

Q Do you have the same familial relationship with Arturo Castaneda?

A Well, Arturo Castaneda, I have been seeing him more frequently, all the time.

Q When you say "seeing him," do you mean seeing his restaurants?

A That is correct, yes.

Q What would you do if you saw that one of the restaurants of Arturo Castaneda was not operating properly?

A First I speak with him, and he knows that I can very well request the place for him to take it off.

Q When you say "for him to take it off," are you referring to the name?

A The name.

Q And what would you do if one of your sons was not operating their restaurants properly?

MR. SANDSTRUM: Objection. Lacks foundation, calls for speculation.

MS. ARMENTA: You can answer the question.

MR. SANDSTRUM: Vague and ambiguous.

THE WITNESS: Talk to them and to fix the business,

for them to fix it.

BY MS. ARMENTA:

Q Have you ever had occasion to be so concerned -- strike that.

How do you feel your sons are -- strike that. I already asked that. I don't want to be repetitive.

Now, you testified yesterday that you were having discussions with Arturo Castaneda about a payment or payments for each restaurant that has your name on it.

A We already negotiate that.

Q Now, if another person, say, somebody you don't know, a stranger came to you and said, "I want to use the name 'Santana's Mexican Food' on a restaurant in another state," say, for example, Arizona, would you feel that you have a right to control the way that name is used?

MR. SANDSTRUM: Assumes facts not in evidence, incomplete hypothetical, calls for speculation, is irrelevant.

BY MS. ARMENTA:

Q You can answer the question.

A I can rent to that person, why not, the name.

Q And in such a situation what efforts would you take, if any, that the restaurant was being run properly and uniformly?

MR. SANDSTRUM: Object. It calls for speculation.

MS. ARMENTA: You can answer.

MR. SANDSTRUM: Assumes facts not in evidence.

THE WITNESS: Well, I understand I could rent it, right, the name --

THE INTERPRETER: Correction, "I understand that I can rent it," not "could rent it."

BY MS. ARMENTA:

Q Is there a different level of monitoring that you would impose on a stranger, as opposed to your sons?

MR. SANDSTRUM: Objection. Calls for speculation and it's vague and ambiguous.

THE WITNESS: Well, the person, stranger, will have to pay to rent.

BY MS. ARMENTA:

Q When you say "rent," you mean for the name?

A The name.

Q Do you currently charge either of your sons, as you say it, rent for the name?

A I don't charge them and I wouldn't like to charge them.

Q But you feel differently with respect to a stranger or Arturo Castaneda?

A Different.

MS. ARMENTA: I have no further questions.

MR. SANDSTRUM: Let me take a two-minute break.

(A recess was taken.)

RECROSS-EXAMINATION

BY MR. SANDSTRUM:

Q You just testified that you feel that you need to supervise Mr. Castaneda's restaurants more than you do your sons because he's not family, correct?

Did I understand your testimony correctly?

A Yeah.

Q Isn't it true that you have a better business relationship with Mr. Castaneda than your son, Abelardo Santana Lee? Isn't that true?

A Well, yes, because right now there are differences.

Q Isn't it true your son filed a lawsuit in Federal Court in or around November of 2003, five years ago, against Arturo Santana Lee, your other son Pedro, as well as yourself?

A Yes.

Q So it would be fair to say that there's been a substantial confrontation and dispute between you and your son, Abelardo Santana Lee, from around November of 2003 to the present?

A Can I say something else other than just "yes" or "no"?

Q Go ahead.

A Abelardo, my son, requested this from me very late because I had already negotiated with him, and whether there is an operation that is past, then you need to respect that. And I am very sorry, I am very sorry, but it was very late.

Q Isn't it true that you haven't exercised any control over Abelardo Santana's restaurants for years and years and years, in fact, you've never exercised control over any of his restaurants that he owned after he purchased the Rosecrans restaurant? Isn't that true?

A At the beginning, at the beginning we used to talk a lot, but I didn't think there was any sense in taking care of that when he works out very well. He does it very well, perfectly.

Q But isn't it true that you have no right to control his restaurants?

MS. ARMENTA: Objection. Calls for a legal conclusion.

You can answer, Mr. Santana.

THE WITNESS: Well, him, I don't have a right. It's his.

MR. SANDSTRUM: I have no more questions.

THE WITNESS: The restaurant.

BY MR. SANDSTRUM:

Q Isn't it true you have no right to control the manner in which Abelardo Santana Lee uses the name "Santana's Mexican Food" in connection --

THE INTERPRETER: Counsel, I have to ask you to repeat from the beginning. I missed one word.

BY MR. SANDSTRUM:

Q Isn't it true you have no right to control and you have not controlled the way Abelardo Santana Lee has used the name "Santana's Mexican Food" in connection with his Mexican restaurants?

A We have never done that.

MR. SANDSTRUM: I have no further questions.

FURTHER REDIRECT EXAMINATION

BY MS. ARMENTA:

Q Just to clarify, Mr. Santana, has the way in which Abelardo runs his restaurants ever given you any reason to try to control his operations?

MR. SANDSTRUM: Objection. It assumes facts not in evidence, lacks foundation.

BY MS. ARMENTA:

Q You can answer.

A No.

Q If you saw Abelardo doing something with the name "Santana's Mexican Food" that was completely disagreeable

to you, what would you do?

MR. SANDSTRUM: Calls for speculation, assumes facts not in evidence, lacks foundation, calls for a legal conclusion.

BY MS. ARMENTA:

Q You can answer.

A I will talk to him and I would fix it for it to be fixed.

MS. ARMENTA: Okay. Our next witness is Arturo Castaneda.

(Whereupon, the following stipulation was agreed upon by counsel in the Deposition of Claudia Vallarta-Santana, taken Monday, January 28, 2008:

"MS. ARMENTA: We are going to dispense with any notarization requirement in connection with the record.

The court reporter will prepare the original transcript and provide it to Mr. Sandstrum within 30 days.

How long will it take to prepare? Not long.

After Mr. Sandstrum has received it, the witness will have 30 days to review, sign it and make any corrections under penalty of perjury.

An expedited copy of the transcript in an electronic version is to be delivered to me so that I may submit it to the Trademark Office.

MR. SANDSTRUM: Let me think about that real quick.

Let's go off the record.

(An off-the-record discussion was held.)

MS. ARMENTA: Mr. Sandstrum and I have agreed that in an effort to comply with the greatest exactitude with the TTAB requirements, when I file the Notice of Reliance on behalf of the petitioner, I will attach any deposition transcripts referenced to the Notice of Reliance and serve those on Mr. Sandstrum at the time the Notice of Reliance is filed.

MR. SANDSTRUM: And there might be a separate section where the document itself, the notice of service is called something different. I just can't recall off the top of my head, but I'm stipulating to that right now. That's good.")

(Whereupon the proceedings concluded at 10:34 a.m.)

* * *

Declaration Under Penalty of Perjury

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

EXECUTED this_____day of_____,

20__, at_____,_____.

(city) (state)

_____

ARTURO SANTANA GALLEGO

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, LEXANN CHRISTY, CSR No. 7932, in and for the state of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were duly sworn; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript [ ] was [ ] was not requested.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: February 12, 2008

LEXANN CHRISTY
CSR NO. 7932

I, _____, a certified interpreter in and for the State of California, do hereby certify that I have read and translated this deposition to the deponent, _____, to the best of my ability.

I state so under penalty of perjury under the laws of the State of California.

Executed this _____ day of _____, 20___, at _____, California.

_____
Interpreter

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REPORTER'S CERTIFICATION OF CERTIFIED COPY

I, LEXANN CHRISTY, Certified Shorthand Reporter, Certificate No. 7932, for the State of California, hereby certify:

The foregoing is a true and correct copy of the original transcript of the proceeding taken before me as thereon stated.

Dated: February 12, 2008

LEXANN CHRISTY, CSR 7932

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Petitioner's Exhibit No. 9
Case No. 92043152
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2 pages

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Sablan Manuel G Jr
6447 West Court Wy 29 Pms.367 9463
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ROBERT D. ZUMWALT,
COUNTY CLERK
County Courthouse, 220 West Broadway
P. O. Box 128, San Diego, California 92112-4104
(619) 236-3253

This Space For Use of County Clerk

077 C
#10.00

SEE REVERSE SIDE FOR INSTRUCTIONS

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

[redacted]

[redacted]

* [redacted]
(Print Fictitious Business Name(s) on Line Above)

** [redacted]
(Street Address of Business — If No Street Address Assigned — Give Street Location of Business Plus P.O. Box or Rural Route)

IN: [redacted] 92106
(City and Zip)

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

*** (#1) [redacted]
(Full Name — Type/Print)
Apt. 202
3111 MACAULAY ST.
(Residence address if not incorporated)
(State of incorporation if incorporated)
SAN DIEGO, CA. 92106
(City and Zip)

(#2)
(Full Name — Type/Print)
Residence address if not incorporated)
(State of incorporation if incorporated)
(City and Zip)

(#3)
(Full Name — Type/Print)
Residence address if not incorporated)
(State of incorporation if incorporated)
(City and Zip)

(#4)
(Full Name — Type/Print) 2 77 5655 10.00 M
709 39[redacted] 10.00 TL
10.00CATE
709 3523 414 3/14/88
Residence address if not incorporated)
(State of incorporation if incorporated)
(City and Zip)

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

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

[redacted]

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

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

N-O-T-I-C-E

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

DEC. 31, 1993

Respondent's Exhibit No. 7
Case No. 92043152
Gallego vs. Santana Grill

ASSIGNED FILE NO. 8805655

1 page

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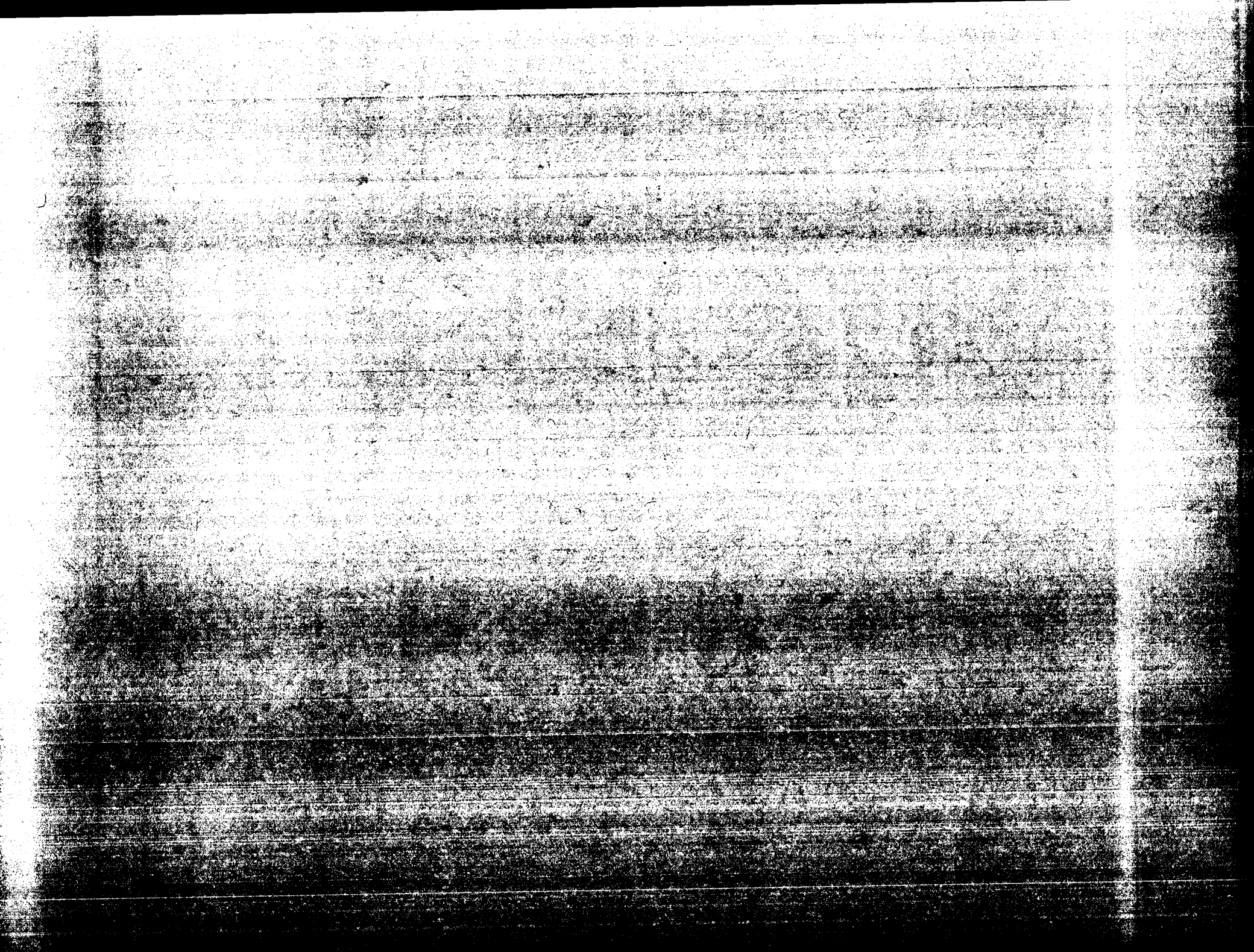

Trial Deposition

Arturo Santana Lee

(Cited as "Arturo SL")

CERTIFIED COPY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ARTURO SANTANA GALLEGO, Petitioner, vs. SANTANA'S GRILL, INC., Registrant.	)	Cancellation Nos. 92043152 (Consolidated) 92043160 92043175

DEPOSITION OF ARTURO SANTANA LEE

JANUARY 30, 2008

ABRAMS, MAH & KAHN
REPORTING SERVICE

4101 Birch Street • Suite 130
Newport Beach • California 92660
949-261-8686 • 800-622-0226

Reported By: Lexann Christy
CSR No. 7932

File No.: 25612

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ARTURO SANTANA GALLEGO, Petitioner, vs. SANTANA'S GRILL, INC., Registrant.	)	Cancellation Nos. 92043152 (Consolidated) 92043160 92043175

Deposition of ARTURO SANTANA LEE, taken on behalf of Petitioner, at Bremer Whyte Brown & O'Meara LLP, 550 West C Street, Suite 1450, San Diego, California, commencing at 9:35 a.m., on Wednesday, January 30, 2008, before Lexann Christy, CSR No. 7932.

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Eugenia Arguello, Certified Interpreter

Claudia Vallarta-Santana
Abelardo Santana
Arturo Gallego
Arturo Castaneda

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ARTURO SANTANA LEE	4	34	106	109

E X H I B I T S

PETITIONER'S EXHIBIT	DESCRIPTION	PAGE
4	Proof of Publication, 1 page	14
5	Colored Photograph, 1 page	19
6	Colored Photograph, 1 page	20
7	Colored Photograph, 1 page	26
8	Colored Photograph, 1 page	26

RESPONDENT'S EXHIBIT	DESCRIPTION	PAGE
R-1	Declaration of Arturo Santana Lee, 3 pages	51
R-2	Insurance Declaration Certificate from Farmers Insurance Group of Companies, 2 pages	63
R-3	Santana's Mexican Food... Es Muy Bueno Menu, 2 pages	88
R-4	Santana's Mexican Food... Es Muy Bueno Menu, 2 pages	88
R-5	Santana Mexican Grill Menu, 2 pages	92

SAN DIEGO, CALIFORNIA, WEDNESDAY, JANUARY 30, 2008

9:35 a.m. - 2:37 p.m.

EUGENIA ARGUELLO,

an interpreter of the Spanish language, was duly sworn by the Certified Shorthand Reporter to interpret from English to Spanish and from Spanish to English the following proceedings:

ARTURO SANTANA LEE,

called as a witness by and on behalf of the Petitioner, and having been placed under oath by the Certified Shorthand Reporter, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. ARMENTA:

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

A Arturo Santana Lee.

Q What year were you born?

A I was born in 1960 on the 5th of September.

Q What is your father's name?

A Arturo Santana Gallego.

Q What are your brothers' names?

A My siblings?

Q Yes, each of your brothers.

A Ana Lillian Santana Lee, Benito Abran Santana Lee, Pedro Santana Lee and Abelardo Santana Lee.

Q When did you first start working at any restaurant that your father owned?

A At the end of 1986, the beginning of '87.

Q What was that restaurant called?

A Alberto's Mexican Food.

Q What was the address of that restaurant?

A It is on Rosecrans, but I don't remember the number.

Q Is it located in the same location where today's Santana's Mexican Food is located?

A Yes.

Q So that would be 1480 Rosecrans in San Diego?

A Yes.

Q What did you do there as an employee when the restaurant was called Alberto's?

A Well, we were cooks, cashiers, everything, everything that had to be done there.

Q At that time was your father the owner of the restaurant Alberto's?

A Yes.

Q Did your father train you to do any of those things that you just mentioned?

A No. We learned with the chain of Alberto's.

Q Then did Alberto's undergo a name change at some point after that?

A Yes.

Q What did Alberto's change its name to?

A To Corona's, Corona's or Corona. I don't remember.

Q How long did that name last on the restaurant, approximately?

A Not very much. I don't remember, but Corona cerveza told us we have to eliminate the name because it was their name, and we changed to Santana's.

MS. ARMENTA: Interpreter, would you agree to change the words "Corona cerveza" in English to "Corona beer"?

THE INTERPRETER: Yes.

BY MS. ARMENTA:

Q Was the name changed to Santana's or Santana's Mexican Food or some other derivation of Santana's?

A Santana's Mexican Food.

Q And approximately what year was that?

A I really wouldn't be able to tell you the year, but Yucca Valley restaurant and Rosecrans restaurant, both of them had the name of Corona, and both of them had to change to the name of Santana's.

Q Let's go back. So when the Rosecrans restaurant

was named Corona's, there was another restaurant in existence at the time that your father owned?

A Yucca Valley.

Q And when the restaurant on Rosecrans was named Corona's, during that time, what was the name that was on the Yucca Valley restaurant?

A Corona's also.

Q And then you said something about Corona's Beer -- Corona Beer complained about the name?

A Yes.

Q What happened next with respect to the name on the restaurants?

A Very fast we took off the name of Corona and then we acquired the name of Santana.

Q Was that name change from Corona's to Santana's Mexican Food at the same time for both restaurants?

A Yes.

Q Now, do you remember the time when your brother, Abelardo Santana, and his then wife, Claudia Vallarta-Santana, acquired an interest in the Rosecrans restaurant?

A No.

Q You were not involved in that transaction?

A No, no.

Q How long did you work at Santana's Mexican Food

approximately?

A About two and a half years, three.

Q And during --

MR. SANDSTRUM: I'm going to object it's vague as to what restaurant we're talking about.

MS. ARMENTA: Fair enough.

Q Were you referring to the Rosecrans location, or did you also work at the Yucca Valley location?

A Well, I opened the restaurant on Rosecrans, and I worked there more than a year, and from there I went on to Yucca Valley.

Q When you worked for approximately a year at the Santana's Mexican Food at Rosecrans, was that while it was named Santana's Mexican Food?

A No.

Q So where were you working when the name change occurred from Corona's to Santana's?

A At Yucca Valley.

Q How long did you work at the Yucca Valley location in that time period?

A More than a year, about a year and a half.

Q And what did you do while you were employed at the Yucca Valley restaurant?

A The same, I worked the kitchen, the cashier, the cash register.

Q And at that time when you were working at the Yucca Valley restaurant called Santana's Mexican Food, who was the owner of that restaurant?

A The owner of that restaurant was myself in the business, and the building belonged to my father.

Q When you were working at the Santana's Mexican Food on Rosecrans, who was the owner of the business?

A My father.

Q After you stopped working at the Yucca Valley restaurant, did you leave the United States?

A Yes.

Q When did you return?

A I came back in 1997.

Q Did you open a business when you returned in 1997?

A Yes.

Q What kind of business?

A The same, restaurant.

Q When you say "the same, restaurant" -- strike that.

Where did you open the restaurant?

A In the city of El Cajon, California.

Q What is the address of that restaurant?

A 411 Broadway.

Q How did it come that you opened a restaurant in

El Cajon? How did you come to choose that location?

A Well, my father and I had been looking for restaurants, and we went around looking for different areas or zones. My father thought so that I wouldn't have problems, that I should open in El Cajon, the restaurant.

Q Who actually found that restaurant location?

A Us, my father and I.

Q So did you have some discussions with your father about opening the restaurant before you did?

A Yes. We were looking around, walking, walking to look for restaurants.

Q And did you have any understanding as to whether or not you would be using the name "Santana's" in connection with that new restaurant?

A Yes.

Q At that time did you get any help from your younger brother or his wife Claudia in connection with opening that restaurant?

A Yes, they did help me.

Q How did they help you?

A Well, first of all, Abelardo helped me so that the site would be rented to me. He helped me with personnel. He helped me to get my insurances.

Q So when you say he helped you so that they would rent you the location, are you talking about his

guaranteeing the lease for you?

MR. SANDSTRUM: I want to object as a leading question.

MS. ARMENTA: Let me rephrase it.

Q What kind of help did Abelardo give you so that someone would rent you the location?

A I think like a guarantor.

Q Were you, however, the tenant under the lease?

A Yes.

Q Was, to your knowledge, Abelardo or Claudia ever the tenant under that lease?

A No.

Q What kind of help did Abelardo or Claudia give you with respect to personnel for opening the El Cajon restaurant?

A They lent me personnel.

Q They loaned you personnel, people who worked at the El Cajon restaurant?

A No.

Q I think I didn't phrase that correctly. When you say they lent you employees, what do you mean by that?

A It means that being that Abelardo had restaurants, from his restaurants he sent people to my restaurant so they would help me.

Q Who paid the wages of those employees while they

were working at the El Cajon restaurant?

A Me.

Q Now, when you say that Abelardo or Claudia assisted you with obtaining insurances, what do you mean by that?

A I got an insurance with a person that insured them, and Claudia helped me with all the paperwork, how I had to do everything, and she practically was in charge of obtaining all the insurances.

Q Who paid the premiums on those insurances?

A Me.

Q At any time did you list Abelardo or Claudia as additional insureds on your policies or did they pay the premiums?

THE INTERPRETER: Can you repeat your question?

(The record was read.)

THE WITNESS: No.

BY MS. ARMENTA:

Q What was your impression of why Abelardo and Claudia helped you open the El Cajon restaurant?

A Well, he's my brother, and I think that all my life I worked with my father, and I was always working with him. I think that's why he helped me. And aside from the fact that he's my brother, and aside from that, I don't know why, but we had always gotten along fine, especially

with him.

Q Did you have the impression or did anyone tell you that in exchange for the help that Claudia and Abelardo expected you to run your restaurant in a particular way?

A No.

Q Did you ever have any discussions with either Abelardo or Claudia in which you believed you needed their permission to use the name "Santana's" on your restaurant?

A No.

Q What name did you ultimately select for that restaurant?

A Santana's Mexican Grill.

Q How did you come to select that name?

A Because I had the idea, and I started grilling the meat in a charcoal grill. That's why -- that's the reason I chose Santana's Mexican Grill. And then later on it didn't work out, it didn't work out because the meat, it shrunk a lot, and so I removed it.

Q When you say you removed it, you removed the physical grill at the location?

A I removed it.

Q Did you maintain the name "Santana's Mexican Grill" on the restaurant?

A Yes.

Q Approximately when did you begin using the name

"Santana's Mexican Grill" in connection with food services at 411 Broadway?

A In 1997.

MS. ARMENTA: Let me mark as Petitioner's Exhibit 4 a document entitled "Proof of Publication" for the Uptown San Diego Examiner, the name of the business Santana's Mexican Grill.

(Exhibit P-4 was marked for identification.)

BY MS. ARMENTA:

Q Do you recognize this document?

MR. SANDSTRUM: It lacks foundation.

THE WITNESS: Yes.

BY MS. ARMENTA:

Q What is it?

A This is where I registered -- I put the name in the newspaper to see if I could put it there, and I was able to do it.

Q Did anyone that you know of object to this notice that you put in the newspaper?

A No.

Q Is this a true and correct copy of the notice that you had placed in the newspaper in 1997?

A Yes.

Q Now, a couple of days ago I'll tell you that Claudia testified she assisted you in filling out the

paperwork for the placement of that ad. Do you remember that?

A I don't remember, but it's very possible, because she helped me with all that.

Q Even though she was helping you or Abelardo was helping you, did you at any point give them any ownership interest in your restaurant?

A No.

Q From the time that the El Cajon restaurant opened until the present, has Claudia Vallarta-Santana ever had an ownership interest in that restaurant?

A No.

Q What about Abelardo Santana?

A No.

Q What about the corporation called "Santana's Grill, Inc.," which is owned by Abelardo Santana?

A Let's see.

Q Not Santana's Mexican Grill, Inc., but Santana's Grill, Inc., your brother's corporation, has his corporation ever owned a piece of your restaurant at El Cajon?

A No.

MR. SANDSTRUM: I'm going to object. Calls for a legal conclusion.

BY MS. ARMENTA:

Q Now, yesterday I'll tell you that Mr. Abelardo Santana testified to the effect that he ordered you to use the name "Santana's Mexican Grill" on the El Cajon restaurant in connection with some sort of plan that he and his wife had about changing their restaurants to that name.

Is that true?

MR. SANDSTRUM: I'm going to object real quick. I don't have the testimony in front of me, so it may misstate testimony.

BY MS. ARMENTA:

Q You can answer the question.

A No.

Q What discussions did you have, if any, with your brother at the time that you selected the name "Santana's Mexican Grill" about that name?

A No, I had no discussions about the name.

Q Did you have any discussions with Claudia Vallarta-Santana about the name?

A No, no, no.

Q Now, were you familiar at that time with the Rosecrans restaurant in which you worked previously?

A No.

Q Do you know what name it had at the time that you selected "Santana's Mexican Grill as the name for your business?

A Yes.
Q What name?
A Santana's Mexican Food.
Q Now, in 1997 when you opened the El Cajon restaurant, was the Yucca Valley restaurant still in existence?
A Yes.
Q What was the name on that restaurant?
A Santana's Mexican Food.
Q Now, let's go back to the Santana's Mexican Food name.

Are you familiar with the slogan Santana's Mexican Food... Es Muy Bueno?

A Well, Santana's Mexican Food was opened by my father.

MS. ARMENTA: "Was placed by my father," Interpreter, or "put on by my father." I don't think he said "opened."

THE WITNESS: We removed Corona --

THE INTERPRETER: Can I ask him?

MS. ARMENTA: Please, Interpreter.

(An off-the-record discussion was held between the witness and the interpreter.)

MS. ARMENTA: Interpreter, correction, please. Do you want to correct that?

THE INTERPRETER: Yes. "My father placed that name."

BY MS. ARMENTA:

Q Please go on.

A And being in Yucca Valley, I hired a radio station, and they made an ad for me, and the song said, "Santana's Mexican Food" with the tune of a song, and at the end it would say, "Es Muy Bueno."

Q Is that the origin of the phrase "Es Muy Bueno" in connection with Santana's Mexican Food?

A Yes.

Q Who paid for that radio ad?

A I did.

Q After that ad was placed, did you or your father take any actions to add that phrase anywhere in writing at the Yucca Valley restaurant?

MR. SANDSTRUM: I'm going to object as compound.

BY MS. ARMENTA:

Q You can answer.

A No.

Q Then when was the next time -- strike that.

That radio ad was placed in about what year, do you remember?

A I'm not very sure, but it must have been around '89, I think. I'm not sure.

Q But it was surely after the name change from Corona's to Santana's Mexican Food?

A Yes.

Q And it was before you left Yucca Valley and went back to Mexico?

A Yes.

Q I'm going to hand you three photographs and let me just first ask you if you could tell me which photograph came first, and then I'll number them accordingly.

MR. SANDSTRUM: I'm just going to place an objection that it lacks foundation.

THE WITNESS: This one is first, and this one is next.

MS. ARMENTA: Let me hand you the document we marked as Petitioner's Exhibit 5, which contains two photographs.

(Exhibit P-5 was marked for identification.)

BY MS. ARMENTA:

Q Do you recognize those photographs?

A Yes.

Q What are they photographs of?

A Well, these are relatives that would come to see me at the restaurant.

Q Who are the people depicted in the bottom restaurant?

A They are my father's cousins.

Q Can you tell by either the age of the baby in that photo or the other persons in that photo approximately what year that photograph was taken?

A This photograph, around '88, '89, more or less.
Q And if I may, are these photographs depictions of the Yucca Valley restaurant?
A Yes.
Q Are they true and correct depictions of parts of the Yucca Valley restaurant, including the sign, in or about 1988 or '89?
A Yes.
Q Let me hand you now Petitioner's Exhibit No. 6.
(Exhibit P-6 was marked for identification.)
BY MS. ARMENTA:
Q Do you recognize that photograph?
A Yes.
Q What is it?
A It's the Yucca Valley restaurant. I think that at this time my aunt was the one that was at that restaurant.
Q Is that your Aunt Blanca?
A Yes.
Q And can you tell from looking at that picture approximately when that picture was taken?
A Well, actually, no. It must have been around '91, around there. I don't know. I don't know.
Q But you think it was after Petitioner's Exhibit 5 was taken?

A Yes.

Q On the top --

MR. SANDSTRUM: I want to object that it calls for speculation, move to strike.

BY MS. ARMENTA:

Q Are you familiar with the people that are depicted in that picture?

A Yes.

Q And is that a true and correct copy of a photograph or true and correct photograph that was taken of those people in front of that restaurant?

A Yes.

Q And did the restaurant and sign appear as they are depicted in that photograph?

A Yes.

Q Now, let's go back to the El Cajon restaurant.

When you opened that restaurant, how did you go about selecting the menu items that you wanted to serve at that restaurant?

A It's the same menu that Abelardo had.

Q Was it the same menu that the Rosecrans restaurant had when your father owned it?

A Almost the same, but no.

Q So it was almost the same, but changed some?

A Yes.

Q When you opened the El Cajon restaurant, did you offer for sale the California Burrito?

A Yes.

Q What is the California Burrito?

A It's a burrito that includes ingredients, potatoes, cheese, meat, and a sauce which is tomato, coriander or cilantro and onion.

Q When you worked at the Yucca Valley restaurant, previous to the time that you opened the El Cajon restaurant, did the Yucca Valley restaurant offer for sale the California Burrito?

A No, I didn't.

Q Do you know when the Yucca Valley restaurant began to offer the California Burrito for sale, if it did?

A When I left, my father included it.

Q And then you put it on the menu at the El Cajon restaurant when you opened that one?

A Yes.

Q And has that menu item been offered continuously since the day that you opened the El Cajon restaurant?

A Yes.

Q What kind of advice, if any, has your father offered you in connection with the El Cajon restaurant at any time?

A Well, I think that the food is fresh, that we

take care of people correctly, and those are the advices that he has given us.

Q What recipe did you use or -- strike that.

Are you using the same recipe for the California Burrito that you said your father put at the Yucca Valley restaurant, or is it different?

A It's the same.

Q What advice did your father give you about selecting the location for the El Cajon restaurant, if he gave you any?

A For me not to open in any area where I would affect my brother.

Q When you say your brother, are you referring to your brother Abelardo?

A Yes.

Q Did you follow that advice?

A Yes.

Q Why?

A Because my father, I think, is the one that helped me, and I have always heeded his advice.

Q Are you familiar with the restaurant called "Burrito Santana"?

A Yes.

Q Where is that located?

A It's on the El Cajon street.

Q Do you know what year it opened?
A No, no, I'm not sure.
Q Is it open today?
A Yes.
Q Who owns it?
A Pedro Santana, my brother.
Q Do you have any knowledge of any conversations between Pedro and your father about use of the name "Santana" on that restaurant?
A No.
Q Do you have any knowledge about any conversations between your brother Pedro and your father concerning the selection of the location for that restaurant?
A No.
Q Now, let's go back to the time that you were working in Yucca Valley.
Aside from sharing a name, Santana's Mexican Food, are you aware of the restaurants sharing anything else, for instance, personnel or merchandise?
A Not personnel, but we all -- but we did buy merchandise at the same place.
Q What kind of merchandise did you buy at the same place?
A Tortillas, the meat, many times paper goods.
Q Do you remember who your tortilla vendor was at

that time?
A Gustavo Gonzalez.
Q Have you been to any of Abelardo's restaurants?
A Yes.
Q Which ones?
A Well, I've been to Rosecrans, Morena, Midway. Those are the ones I've been to.
Q What are the similarities between those restaurants and your restaurant in El Cajon, if any?
A Well, some of them, the paint, the name, right, the logo.
Q Similarities on the menu?
A Well, at that time it was the same. Don't know if something already changed.
Q When was the last time that you painted the El Cajon restaurant?
A Two years ago.
Q Did you choose new colors, or were you just repainting?
A I repainted.
Q When was the first time that you selected new colors to paint the El Cajon restaurant?
A We have always been the same. They have not changed.
Q What colors has your restaurant been since the

time it opened for business?

A It has an orange and a -- like wine or blue. I don't know, but they are the same since I opened.

Q I'm going to hand you two photographs, which we'll mark as Petitioner's Exhibit 7 and Petitioner's Exhibit 8.

(Exhibits P-7 and P-8 were marked for identification.)

BY MS. ARMENTA:

Q Please tell me if you recognize these photographs and what's depicted in them.

A Yes.

Q Let's look at No. 7 first.

What is that a photograph of?

A It's a photograph that was taken at my restaurant. It was a party.

Q On what date?

A I don't remember.

Q Is that your handwriting?

A Around '98.

MR. SANDSTRUM: I'm going to object. It lacks foundation. Can I see the photographs real quick?

BY MS. ARMENTA:

Q Who is the young man depicted in that photograph in a graduation robe?

A This young man is the son of a lady that used to work with me.

Q Turn the pictures over. Do you recognize that handwriting?

A No.

Q So as far as you remember, it was sometime in 1998; is that correct?

MR. SANDSTRUM: Lacks foundation.

BY MS. ARMENTA:

Q To the best of your ability, when was that photograph taken?

MR. SANDSTRUM: Objection. Lacks foundation.

BY MS. ARMENTA:

Q You can answer.

A In '98.

Q Did you attend the party that is depicted in that photograph?

A Yes.

Q Now, in those photographs there's a piece of what looks like a Santana's sign and some orange triangles with some blue.

Were those things located on the inside of your restaurant in 1998?

A Yes.

Q Were they located on your restaurant in 1997?

A Yes.

Q Where did you come up with the idea, if you did, to use those triangles on your restaurant in 1997?

A Benito, my brother, he helped me to do all this, and he did them -- and he decorated the room.

MR. SANDSTRUM: Objection. Move to strike as nonresponsive.

BY MS. ARMENTA:

Q When you opened your restaurant in 1997, did you place a sign inside the restaurant with the name "Santana's"?

A Yes.

Q What did it look like?

A Like this here.

Q It looked like what is depicted in Petitioner's Exhibit 7 and Petitioner's Exhibit 8?

A Yes.

Q And did you use those triangles on any exterior signs of the restaurant when you opened the restaurant?

A Outside, no.

Q Did you use the word "Santana's" in 1997 on exterior signage when you opened the restaurant?

A Yes.

Q Did you use the word "Santana's" on your menus at the time when you opened the restaurant in 1997?

A Yes.

Q Did you use the triangles that are depicted in Petitioner's Exhibit 7 and 8 at the time you opened the restaurant on your menus? Let me rephrase that question.

MR. SANDSTRUM: Vague and ambiguous.

BY MS. ARMENTA:

Q Did you use those triangles in 1997 when you opened the restaurant on your menus?

A No. The letters, yes, but not the triangles.

Q So --

A Excuse me. Yes, they were there, uh-huh.

Q They were there on the menu?

A Yes, I think so, but I'm not sure.

Q Did Claudia or Abelardo in any way assist you or direct you in connection with the placement of those triangles that are depicted in Petitioner's Exhibit 7 and 8?

A No.

Q During the time that Abelardo and Claudia assisted you in opening the El Cajon restaurant, how frequently did they come to the El Cajon restaurant?

A Not much, no, no.

Q In the last -- so that was 1997.

From 1998 through, say, 2001, with what frequency did Abelardo or Claudia come to your El Cajon restaurant?

A Well, not much. I think that if Abelardo has gone to my restaurant 20 times in the whole time, that would be too much. That would be an exaggeration.

MS. ARMENTA: Let's go back and read the question, and I'm going to ask the interpreter for a correction.

MR. SANDSTRUM: If it's proper.

MS. ARMENTA: It is.

MR. SANDSTRUM: She's certified.

(The record was read.)

MR. SANDSTRUM: Objection. Lacks foundation, calls for speculation.

MS. ARMENTA: My objection to the interpretation is that I heard the witness say "casi no," which I understand to mean "hardly at all," and I didn't hear the interpreter give that meaning.

THE INTERPRETER: My interpretation was "not much," it's --

MS. ARMENTA: Close.

THE INTERPRETER: Close, yeah.

MS. ARMENTA: Thank you.

MR. SANDSTRUM: Renew my objection, lacks foundation, calls for speculation.

BY MS. ARMENTA:

Q Approximately how many times did you see Claudia or Abelardo come to your restaurant between 1997 and 2001,

just those years?

A I think Claudia four times that I remember, and Abelardo, well, about 10 times, I think.

Q At any time did either of them during those visits and those years tell you how you should be running the restaurant?

A No.

Q Did you at any time obey anything they told you with respect to running your restaurant during those years?

A Not -- they didn't impose anything, but, of course, they would give me advice.

Q Was it advice as someone, a friend or brother, would give to another, or did you understand it that they had a right to tell you what to do?

A No, no, it was just like an advice.

Q During those years did they ever tell you that they had the right to the name "Santana's Mexican Grill"?

A No.

Q During those years did they ever tell you that they were relying on their use of the name "Santana's Mexican Grill" to show that they had invented or created the name?

A No.

Q You said before that there were similarities between the El Cajon restaurant in terms of the paint and

some of Abelardo's or Claudia's restaurants.

Do you remember that?

A Yes, yes, similarity.

Q Of the restaurants of Abelardo and Claudia that have similar paint, were those painted before or after yours?

MR. SANDSTRUM: Lacks foundation.

BY MS. ARMENTA:

Q If you know.

A Yes. I'm not very sure, but I think at that time Rosecrans was painted like my restaurant.

Q What about the others?

A I don't remember.

Q Were the colors associated with the Rosecrans restaurant the colors that were on it when your father owned it, if you know?

A I don't remember. No, I don't remember.

Q Fair enough. We can ask your father. That's okay.

At some point in time did you learn that Abelardo and Claudia or their corporation had applied for a federal trademark in connection with the "Santana's" name?

A I think so. Once Abelardo made a comment that he was going to register the trademark.

Q Did he tell you which ones in particular he was

going to register?

A No.

Q At the time that Abelardo sought federal registration, did he or anyone else give you any written notice that one of the marks that they were applying for was "Santana's Mexican Grill?

A No.

Q Have you at any time allowed Abelardo or Claudia or their corporation to control the operations at the El Cajon restaurant?

A No.

Q Have you at any time allowed Abelardo, Claudia or their corporation to control your recipes or menu selections at the El Cajon restaurant?

A No.

Q Have you at any time allowed Abelardo, Claudia or their corporation to control your selection of vendors in connection with the El Cajon restaurant?

A No.

Q Have you at any time -- strike that.

MS. ARMENTA: I don't have any further questions on direct. Mike, if you have cross-examination --

MR. SANDSTRUM: Let's take a break.

(A recess was taken.)

///

CROSS-EXAMINATION

BY MR. SANDSTRUM:

Q Good afternoon, my name is Mike Sandstrum, and I represent Santana's Grill, Inc. in these proceedings. I want to remind you you're still under oath under penalty of perjury, so you understand it's important that you tell the truth, correct?

A Yes.

Q Now, can you read English with ease?

A No.

Q Can you speak English with ease?

A No.

Q How good would you consider your English as far as speaking?

MS. ARMENTA: Objection. Vague.

BY MR. SANDSTRUM:

Q Can you speak English very well?

MS. ARMENTA: Objection. Vague.

THE WITNESS: No.

BY MR. SANDSTRUM:

Q Can you read English very well?

MS. ARMENTA: Same objection.

THE WITNESS: No.

BY MR. SANDSTRUM:

Q Do you consider your ability to speak English to

be poor?

MS. ARMENTA: Same objection.

THE WITNESS: Yes.

BY MR. SANDSTRUM:

Q And same question as to your ability to read English.

MS. ARMENTA: Same objection.

THE WITNESS: Yes.

MS. ARMENTA: Hold on just one second. Can we just make sure that in the record my objection is preceding the answer because of the interpretation issue?

THE REPORTER: It is.

BY MR. SANDSTRUM:

Q I believe you testified earlier that you in the 1986 to 1987 time frame worked as a store manager during the day for the Rosecrans restaurant; is that correct?

A Not like as a manager. I worked for my father at the restaurant.

Q And would you manage employees and other cooks there?

A Yes.

Q Would you take care of the cashier?

A Yes.

Q Would you be in charge of the money that comes in?

A As far as counting it and delivering it to him.
Q So when you worked at the Rosecrans restaurant during the 1986 to '87 time frame, at times when your father was not there you were acting as store manager, correct?
A Well, yes.
Q Now, isn't it true that your brother, Abelardo Santana Lee, was during the same time frame acting in the same capacity as a night manager for the Rosecrans restaurant?
A No.
Q Who was the manager during that time frame for the nighttime shift from 6:00 to 2:00 a.m.?
A He was there, he was there, but when there were serious problems like there was no personnel or something happened, I would take care of it.
Q So you would work there during the entire day at points and work all the way through the night shift?
A No.
Q So it was your brother who was working in the capacity as store manager at night?
A Yes, but he did not solve the same problems that I solved.
Q What type of problems did you solve that were different than the type of problems that Abelardo Santana

Lee had to deal with?

A When somebody was short, I would take care of that. When there was problems of something else, my father would talk to me.

Q But during the night shift in the 1986/1987 time period, Abelardo would be in charge of the cooks and the other employees and making sure customers were happy; is that correct?

A Yes.

Q And that's true -- your duties as a store manager for the Rosecrans restaurant continued up until you left to work in Yucca Valley, correct?

A Okay, can you repeat that, please?

Q Yes. How long did you serve as store manager for the Rosecrans restaurant?

A A little bit more than a year.

Q So the 1986/1987 time?

A '86 -- I think so.

Q How about 1988?

A I was in Yucca Valley.

Q At that point in time, isn't it true that your brother, Abelardo Santana Lee, was still performing managerial duties at the Rosecrans restaurant in 1988 and 1989 and 1990?

A I couldn't say because I had nothing to do with

the restaurant.

Q So you don't know one way or the other whether or not Abelardo Santana was working still as a night shift or day shift manager at the Rosecrans restaurant from 1987 through 1991?

A No.

Q Do you know who the manager was during the time frame or managers were from the time frame 1987 through 1991?

A Vaguely. I remember my father brought one of my cousins and another person, but I don't know -- I don't remember in what years.

Q During that time frame were you and Abelardo Santana and your other brothers down in Mexico in early 1990?

A I was in Mexico already.

Q What was the purpose of you being in Mexico?

A I went to Mexico because while I was living in Yucca Valley, my wife was going through the process of her immigration papers, and the government did not accept her, so we had to go to Mexico.

Q Are you aware of whether or not Abelardo Santana Lee was in Mexico in 1990, or was he in the United States?

A No. He was in the United States.

Q Was he working -- do you know if he was working

at the Rosecrans restaurant?

A No, I don't know.

Q Now, you testified earlier today that at one point in time in the early 1990s, I believe, you said you owned the Yucca Valley restaurant.

What do you mean by "owned"?

A I was the owner of the business part.

Q Were you acting like a manager or as a legal owner?

MS. ARMENTA: Objection. Vague and calls for a legal conclusion.

THE WITNESS: I was the owner of the business.

BY MR. SANDSTRUM:

Q Are there any legal papers that were filed in the city of Yucca Valley that identified you as the owner of the Yucca Valley restaurant?

A I'm not sure, but I think so.

Q What type of papers, if you know, exist?

A Well, I think the registration for the restaurant.

Q Anything else?

A Well, I don't remember. I don't remember.

Q Are you aware of any other documentation or writings that would show that you were the owner of the Yucca Valley restaurant at any time?

A Yes, I think so, I think so.

Q What are those writings or documents?

A What you use to register a restaurant.

Q So do you have a specific recollection of signing a registration with any governmental agency which identified you as the owner of the Yucca Valley restaurant?

A Yes, I think so.

Q What is the document?

A For instance, the working permit for the restaurant.

Q And that would be in your name?

A I'm not very sure. I think so.

Q So, basically, you don't have a specific recollection one way or the other whether or not a document exists identifying you as a legal owner of the Yucca Valley restaurant?

MS. ARMENTA: Objection. Asked and answered and calls for a legal conclusion.

THE WITNESS: Well, to say "yes," I would have to see them. I would have to look for them and bring them to you, but I cannot say yes, yes.

BY MR. SANDSTRUM:

Q Okay. Has anybody ever asked you to produce any documents showing that you were a legal owner at any time of the Yucca Valley restaurant?

MS. ARMENTA: Objection. I object to the extent it calls for attorney-client privileged communications, and on that basis, excluding that information, I instruct the witness not to answer.

MR. SANDSTRUM: On a "yes" or "no" question?

MS. ARMENTA: He can answer "yes" or "no," but he has to exclude anything that I told him.

MR. SANDSTRUM: I agree. No problem.

Q You can answer "yes" or "no."

A No.

Q Earlier you testified that you were trained in the Mexican restaurant fast service business by Alberto's Mexican Restaurant, correct?

A He did not train me. I went to work there, and they paid me for working.

Q And you learned how to -- you learned your skills at that restaurant, and this is a different restaurant than the restaurant that your father opened on Rosecrans that was initially called "Alberto's," correct?

A They were the same, the restaurants with the same menu and everything, but this one was my father's.

Q I am a little unclear.

You received your training in the Mexican restaurant business at your father's first restaurant that he owned called "Alberto's"; is that correct?

A No.
Q Where was the location that you first were trained in the Mexican restaurant business?
A In Oceanside.
Q What was that restaurant called?
A Alberto's Mexican Food.
Q And do you recall who there was your manager or who trained you?
A Yes.
Q Who was that individual?
A Guadalupe de la Torre.
Q Anybody else that you recall?
A No.
Q You also testified earlier that I believe from the 1992-ish to 1997 time frame, you were in Mexico working in a business, correct?
A Okay, again.
Q I believe you testified earlier that from around 1992 through 1997 that you were in Mexico, correct?
A Yes.
Q What were you doing in Mexico?
A We had a construction equipment.
Q Is that a construction equipment business?
A Yes.
Q Were you also working in a gravel plant?

A Yes.
Q Is that the same business?
A Yes.
Q Was your father there, as well, during that same time frame working in that business?
MS. ARMENTA: Objection. Vague as to time.
MR. SANDSTRUM: Let me clarify.
Q During 1992 to 1997, was your father there also working in that gravel business?
MS. ARMENTA: Objection. Vague.
THE WITNESS: No.
BY MR. SANDSTRUM:
Q Who else was working with you during that time?
A My father would help us economically, but he had the restaurant here, and nobody helped me. I was alone over there.
Q Was your father in the United States during the 1992 through 1997 time frame?
A I'm not sure.
Q Do you know if he was in Mexico during that time frame?
MS. ARMENTA: Objection. Vague.
THE WITNESS: No, no, I don't know.
BY MR. SANDSTRUM:
Q So in 1992 do you have a recollection of whether

or not he was in Mexico or the United States primarily?

MS. ARMENTA: Objection. Vague.

THE WITNESS: I don't remember.

BY MR. SANDSTRUM:

Q How about in 1993, do you recall if your father was primarily in Mexico or primarily in the United States during that year?

A I think mainly in the United States.

Q What do you base that belief on?

A Because we didn't have any money to work the plant, and he -- I think he used to take money from here.

Q When you say the word "think," it's important. We don't want you to guess. We want to make sure you're testifying from your memory, your personal knowledge, so when you say the word "think," are you guessing or is that something based upon your personal knowledge?

A Well, I'm trying to remember, see, and I cannot tell you exactly.

Q I just don't want you to guess. If you don't have a memory, it's fine to say, "I don't remember."

A Okay.

Q That's all. We want to make sure we have an accurate record.

In 1995 do you have a recollection of whether your father was primarily living and working in Mexico or

primarily living and working in the United States?

A No. In Mexico.

Q What was he doing, if you know?

A Well, he was helping us at the plant. What year did you say?

Q 1995.

A No. The plant was already closed, yes.

Q So when was he helping you with working at the plant -- by "the plant," I'm assuming you're talking about the gravel plant -- when was your father helping you or working with you at that gravel plant?

A I want you to specify the question exactly. Help me. How? Physically or economically or how?

Q Why don't you tell me. Was he just helping you from a money standpoint economically or with managerial decision making responsibilities or physical help or all of the above?

A To make decisions, maybe economically. But in '95 the plant -- my father -- the plant did not exist anymore.

Q Do you recall if your father had an active involvement as far as investing money in this gravel plant? Was he the main investor in the plant?

A Yes.

Q Was he the sole investor?

A Yes.

Q In 1990, going back a little bit, was your father working in a supervisory capacity at this plant, the gravel plant?

A Well, a supervisor, but mainly in the investment, not the actual plant.

Q So mostly with investment?

A Yes.

Q Who was the person who was making the supervisory and managerial decisions as far as the operation of the gravel plant?

A Me.

Q Did you need to consult with your father regarding major key decisions?

A As to there was no money, I would decide what had to be done.

Q Did your father ever obtain -- isn't it true your father obtained loans from various people to help keep the gravel plant running?

MS. ARMENTA: Objection. Calls for speculation.

THE WITNESS: I think that he did have -- he did. My sister helped us.

BY MR. SANDSTRUM:

Q Isn't it true that Abelardo Santana Lee lent you money in connection with the gravel plant?

MS. ARMENTA: Objection. Lacks foundation, calls for speculation.

BY MR. SANDSTRUM:

Q If you know.

A I don't know.

Q You also testified earlier today that in connection with the El Cajon restaurant located at 411 Broadway -- I'm going to refer to that restaurant as the El Cajon restaurant, okay?

A Yes.

Q In connection with that restaurant, you testified, and correct me if I'm wrong, that your father and you chose the location, correct?

A Yes.

Q And you testified that the location was chosen because it would not interfere with the restaurants being run by Abelardo and Claudia Santana; is that correct?

A Yes.

Q Isn't it true that the reason this location was picked was because it was very close to your residence in Tecate, Mexico?

A Also.

Q You also testified earlier, just to clarify, that the menu that you originally used when you opened the El Cajon restaurant was very similar to the menu that your

father originally used for the Rosecrans restaurant, correct?

A Yes.

Q By "similar," are you referring to food items that are offered on the menu, or are you referring to the appearance of the menu or both?

A I'm referring to that a lot of the food that is offered right now is what was being offered when we started.

MR. SANDSTRUM: I'm going to object that it's nonresponsive. I move to strike. It's not your fault.

If you could read my question back -- let me ask it again.

Q The question I was asking, when you first started using a menu at the El Cajon restaurant, you testified that it was very similar to your father's original menu used at the Rosecrans restaurant.

Do you recall that?

A Yes.

Q My question was, to clarify, did you mean that the menu items were similar or was the appearance of the menus also similar? Did they look the same?

MS. ARMENTA: Objection. Compound.

THE WITNESS: The menu was something that they had created, but the foods -- the dishes had a lot from the

first menu.

BY MR. SANDSTRUM:

Q By the words "they created," who are you referring to?

A For instance, they had already placed the food differently in the menu already. They had a group of specials that did not exist.

Q By "they," who are you referring to?

A Abelardo and Claudia.

Q Isn't it true that the menu you used was created by Claudia Santana, the format of the menu, the appearance, in 1998?

MS. ARMENTA: Objection. Vague, compound, unintelligible.

MR. SANDSTRUM: I understood it.

THE WITNESS: In '98 I don't know, but Claudia and Abelardo had formed it.

BY MR. SANDSTRUM:

Q Formed it, the menu?

A Uh-huh, yes, excuse me.

MR. SANDSTRUM: I'm going to mark a three-page document entitled "Declaration of Arturo Santana Lee," dated February 2005, and attached as Tab 9-B a menu with the name "Santana's Mexican Grill"," and I'll represent to everybody that this was a declaration, I believe, that was

attached to Petitioner's Motion for Summary Judgment.

MS. ARMENTA: May I see it?

MR. SANDSTRUM: It only has one of the exhibits. I narrowed it down because it was so bulky.

MS. ARMENTA: Are you saying this was Exhibit B or C to the declaration?

MR. SANDSTRUM: It's the wrong tab number, you're right. I'm going to remove Tab 9-B, because it's not necessary.

MS. ARMENTA: I'm going to place an objection on the record to showing the witness the declaration that contains exhibits that appear to be incomplete.

MR. SANDSTRUM: I can go get a complete exhibit.

MS. ARMENTA: Either way. Maybe you want to just show him the menu or the declaration, but I don't want there to be confusion.

MR. SANDSTRUM: This is Exhibit C, I have 9-B here. I can go get 9-C.

MS. ARMENTA: However you want to do it.

MR. SANDSTRUM: Let's take a break and I'll get 9-C real quick.

(A recess was taken.)

MR. SANDSTRUM: We can go back on the record. I didn't make a mistake, I never do. I was so lucky. It is -- I'm going to mark as Respondent's Exhibit No. 1 a

document entitled "Declaration of Arturo Santana Lee," dated February 10, 2005, and behind that there's a Tab 9-B and behind that there is what appears to be a menu called "Santana's Mexican Grill...Es Muy Bueno Home of California Burrito."

(Exhibit R-1 was marked for identification.)

MS. ARMENTA: I have one other objection -- do you have the Spanish translation of it? All our declarations were translated into certified translations.

MR. SANDSTRUM: You translated this one.

MS. ARMENTA: I don't think so.

MR. SANDSTRUM: "Cris Armenta."

MS. ARMENTA: Can I see that because we hired official translators?

MR. SANDSTRUM: This was taken right out of the Motion for Summary Judgment.

MS. ARMENTA: I orally translated it. This isn't signed. Are you sure this is the right one?

MR. SANDSTRUM: I just took it out of your motion.

MS. ARMENTA: Okay.

BY MR. SANDSTRUM:

Q Let me ask the witness real quick, is that your signature on Exhibit R-1?

A Yes.

MR. SANDSTRUM: I want to ask the translator to

translate paragraph No. 3 for the witness.

THE INTERPRETER: May the interpreter read it first?

MR. SANDSTRUM: Sure.

(Whereupon, the interpreter translated the document.)

MR. SANDSTRUM: What I'll read in now "Attached as Exhibit B are true and correct copies of the menu from the El Cajon Restaurant" and, again, this is dated February 10, 2005.

Q I'm going to show the witness page 3 of Exhibit R-1, which is a menu, and I'll ask him is this the menu we have been talking about that you used in 1998 in connection with the El Cajon restaurant?

A Yes.

Q This menu we just looked at, is this the menu that Abelardo or Claudia Santana created for you to use?

MS. ARMENTA: Objection. Calls for speculation as to "created."

THE WITNESS: They did not create it so I could use it. They gave me copies of their own menus so I would use when I opened my restaurant.

BY MR. SANDSTRUM:

Q So Abelardo or Claudia Santana gave you a copy of a menu similar to this to use in your El Cajon restaurant when you opened it up?

A Yes.

Q And you used this menu or something similar to it, the same appearance, from 1998, January 1998, up until the date of your declaration, February 10, 2005; isn't that correct?

A Yes.

Q Isn't it true that this menu lists the restaurants, the Mexican restaurants, owned by Abelardo and Claudia Santana, including the Rosecrans restaurant, their restaurant located at 1525 Morena Boulevard in San Diego, and the restaurant located at 3742 Midway Drive, San Diego? Isn't that true?

MS. ARMENTA: Objection. The document speaks for itself.

THE WITNESS: It's true.

BY MR. SANDSTRUM:

Q And isn't it true that the restaurant located at 3742 Midway is called Santana's Mexican Grill?

A Yes.

Q Do you have an understanding whether or not the term or name "Santana's Mexican Grill" was also being utilized at the Rosecrans and Morena Boulevard in 1998?

A Well, can you repeat the question?

Q Yes. Do you have any knowledge as to whether the name "Santana's Mexican Grill" with this saw-toothed

pattern triangle logo was being used at the Rosecrans restaurant, just those two restaurants, in 1998?

A Yes.

Q How about the same question, if you remember it, for the year 1999?

A No, I don't remember, no.

Q Do you know if they used the Santana's Mexican Grill name with that logo, saw-toothed pattern logo, the triangle logo, in 2000?

A Yes.

Q You know they did, right?

A Yes.

Q And that's the same answer for 2001?

A Yes.

Q And it would be the same answer for 2002?

A Yes.

Q Up until the present, correct?

A Yes.

Q One more quick question on this, on Exhibit R-1, page 3 of that exhibit, talking about the menu, there is some handwriting at the bottom.

Is that your handwriting?

A Yes.

Q And is that "Asa de Oro" and that's the phone number for "Asa de Oro"?

A Yes.
Q And that is one of your restaurants, right?
A Yes.
Q Where was that restaurant location?
A In Spring Valley, Campo Road.
Q When was that opened, approximately? The date is fine.
A 2003.
Q Did you ask permission from Abelardo Santana or Claudia Santana or their corporation, Santana's Grill, Inc., to utilize the Santana's Mexican Grill name for that restaurant?
A No.
Q Isn't it true Abelardo Santana, your brother, is the one who created the Santana's Mexican Grill name?
A He made it up from what was there already. He created it from what was there already.
Q I'm confused. What was there already? Are you referring to the name "Santana's Mexican Food"?
A Well, "Santana" was already there.
Q Can you clarify your answer? I'm not sure -- you testified just a second ago that he made the Santana's Mexican Grill from what was already there. I'm not sure what you mean.
A Well, I'm going to explain to you because I'm a

little bit confused.

Q Me too.

A In 1997 I opened my restaurant with the name "Santana's Mexican Grill"." "Mexican Grill" was created because I wanted to grill the meat on a grill with charcoal.

Q So it's your testimony that your brother, Abelardo Santana Lee, did not suggest to you or direct you to use the Santana's Mexican Grill, is that correct, in connection with El Cajon?

MS. ARMENTA: Objection. Vague, confusing and unintelligible, compound.

BY MR. SANDSTRUM:

Q Do you understand the question?

A Can you repeat it?

MR. SANDSTRUM: Can you repeat the question?

I'll ask it again because I don't want to hear that objection.

Q Isn't it true that your brother, Abelardo Santana Lee, directed you to use the Santana's Mexican Grill name in connection with the El Cajon restaurant as part of an overall plan that your brother had to start using that name at restaurants that they were going to open?

A No.

Q You were aware that your brother, Abelardo

Santana Lee and Claudia Santana Lee -- Claudia Vallarta-Santana -- let me start over.

Isn't it true that Abelardo Santana and Claudia Santana were in the process of opening a restaurant in Midway?

A Yes.

Q Correct?

A Yes.

Q And the reason why El Cajon opened first is because the Midway restaurant was being remodeled; isn't that true?

MS. ARMENTA: Objection. Assumes facts not in evidence and calls for speculation.

THE WITNESS: I don't remember.

BY MR. SANDSTRUM:

Q Had the Midway restaurant in San Diego that was going to be run by and owned by Claudia and Abelardo Santana opened before the El Cajon restaurant? Isn't it true they were going to use the Santana's Mexican Grill name with respect to that restaurant?

MS. ARMENTA: Objection. Improper hypothetical, unintelligible and calls for speculation.

THE WITNESS: No.

BY MR. SANDSTRUM:

Q So why is it that on your menu that you used at

the El Cajon restaurant from 1998 up until February, at least, of 2005 do you list all of your brothers and his ex-wife's restaurants?

MS. ARMENTA: Objection. Assumes facts not in evidence and misstates the witness' testimony.

MR. SANDSTRUM: It says it right here on the menu.

MS. ARMENTA: I stand on my objection.

THE WITNESS: Why did I put them on the menu?

BY MR. SANDSTRUM:

Q Why do you have your brother's restaurants, Abelardo Santana Lee and Claudia Santana, on a menu that you used from 1998 up until at least the date of your declaration of February 10, 2005? Isn't it because it was their idea to utilize the Santana's Mexican Grill name as part of their overall business chain?

MS. ARMENTA: Same objection, plus compound and argumentative.

THE WITNESS: In the first place, I did not make that menu. They made it.

BY MR. SANDSTRUM:

Q No, I understand that, but you used it for seven years.

A Oh, yes.

Q I think you also testified earlier about the generous activities or tasks that Abelardo and Claudia

Santana did for you in helping getting the El Cajon restaurant started, correct?

A Yes.

Q And we talked about them training personnel, correct?

A Yes.

Q And that probably took a lot of time, correct?

A Yes.

MS. ARMENTA: Objection. Vague.

BY MR. SANDSTRUM:

Q Is it your understanding that Abelardo and Claudia Santana spent a substantial amount of time training employees that you utilized at the El Cajon restaurant?

MS. ARMENTA: Objection. Vague.

THE WITNESS: Yes.

BY MR. SANDSTRUM:

Q Is it your understanding that -- well, let me ask it this way -- strike that.

You are the tenant for the El Cajon restaurant, correct?

MS. ARMENTA: Objection. Vague.

BY MR. SANDSTRUM:

Q You're a tenant, right?

MS. ARMENTA: Do you mean for the restaurant or for the building? Objection, vague.

MR. SANDSTRUM: For the building.

THE WITNESS: Yes.

BY MR. SANDSTRUM:

Q For the building located at 411 Broadway, El Cajon, California, correct?

A Yes.

Q Isn't it true that the landlord was not going to rent you that building unless Abelardo Santana and Claudia Santana guaranteed the lease, correct?

MS. ARMENTA: Objection. Calls for speculation.

BY MR. SANDSTRUM:

Q Do you have personal knowledge?

A Yes.

Q So Claudia Santana and Abelardo Santana had to guarantee a 10-year lease, dated November 21st, 1997, so that you could lease that property, correct?

A Yes.

Q In fact, aren't they still guarantors of that lease to this very day?

A No.

Q They're no longer guarantors of that lease?

A No, because it's another owner.

Q So as of this day, to your knowledge, Claudia Santana and Abelardo Santana are no longer guarantors of the lease that you have for the El Cajon restaurant or

building?

MS. ARMENTA: Objection. Asked and answered.

THE WITNESS: I don't know.

BY MR. SANDSTRUM:

Q You don't know if they're guarantors anymore?

A The problem is that the owner changed and the contract changed, and in the new contract they don't appear as guarantors.

Q Isn't it true that they guaranteed your lease because you're Abelardo's brother, that was one reason, right?

A Yes.

Q And the other reason was that it was Abelardo Santana's and Claudia Santana's business plan to start using the name "Santana's Mexican Grill"; isn't that true?

A No.

Q Who is your current lessor for the El Cajon building?

MS. ARMENTA: Objection, relevancy.

THE WITNESS: It has changed owners twice. I don't remember the name.

BY MR. SANDSTRUM:

Q Do you recall who your current insurance carrier is for the El Cajon restaurant?

A Yes. The name of the man is Allen Mendoza.

Q Who was your insurance carrier for the El Cajon restaurant in late '97 through the '98 time period?

A Allen Mendoza.

Q Wasn't Allen Mendoza an insurance broker?

A Yes.

Q Who was the insurance carrier?

A Farmers.

Q Isn't it true that on a policy that was obtained for the El Cajon restaurant for the period of December 18, 1997 through December 18, 1998 for Farmers Insurance, that Abelardo and Claudia Santana, yourself, all doing business as Santana's Mexican Grill were named insureds on the insurance policy?

A Yes.

Q And Abelardo and Claudia Santana defined as doing business as Santana's Mexican Grill on this insurance declaration was because this was part of their overall plan to use the name "Santana's Mexican Grill";" isn't that true?

A Yes, it was their plan, but they never told me that.

Q "It was their plan, but they never told me that," what do you mean by "their plan"?

A Because I insured with this insurance because they helped me. I did not speak English. At that time for

me it was very difficult to do all that paperwork. They had much more experience than I did, and they helped me.

MR. SANDSTRUM: I'm going to mark as Respondent's Exhibit 2, an insurance declaration certificate from Farmers Insurance Group of Companies, which names Abelardo and Claudia Santana and Arturo Santana dba Santana's Mexican Grill, with respect to the mailing address of 411 Broadway, El Cajon as Exhibit R-2, Respondents' 2.

It has a policy period effective date of 12-18, 1997 to 12-18, 1999 and an insurance policy number of 60216-83-75.

MS. ARMENTA: May I see it, please.

MR. SANDSTRUM: Yes. Also as part of R-2, I'm going to mark page 2, which is an additional insured endorsement by the named insured, Abelardo and Claudia Santana and Arturo Santana, doing business as Santana's Mexican Grill for the 411 Broadway, El Cajon restaurant, naming as an additional insured Lear Investments, a California general partnership.

(Exhibit R-2 was marked for identification.)

BY MS. ARMENTA:

Q Looking at Respondents' Exhibit 2, it also indicates three business type boxes to be checked. One is a partnership, one is a corporation and one is "other," and there is an X in the partnership box.

Have you ever seen that document before?

MS. ARMENTA: I have an objection. First of all, the document is in English. There is no translation for the witness.

Secondly, Counsel has read from the document without having the witness identify whether he's ever seen the document before.

MR. SANDSTRUM: I was just trying to help out.

MS. ARMENTA: Or read the document in Spanish.

BY MR. SANDSTRUM:

Q Have you seen this document before?

A No.

MR. SANDSTRUM: I'm going to have the interpreter interpret the -- let's go off the record.

(An off-the-record discussion was held.)

MS. ARMENTA: I object to any questions put to the witness about this document based on a lack of foundation, lack of authenticity and the fact that the witness has already testified that he's never previously seen the document.

MR. SANDSTRUM: That's because he can't read English.

That's why what I'm doing now is on Exhibit R-2, Respondents' 2, I'm highlighting the portions that I read into the record so that they can be translated to you to see if it refreshes your memory whether or not you have

ever seen this document or this is an accurate insurance certificate for the El Cajon restaurant.

MS. ARMENTA: Improper foundation with respect to attempt to refresh the witness' recollection.

(Whereupon the interpreter translated the document.)

BY MR. SANDSTRUM:

Q Is Exhibit R-2 an insurance certificate from Farmers Insurance for your El Cajon restaurant for the periods of December, '97 through December 18, 1998?

MS. ARMENTA: I object to counsel's testimony as to the authenticity of that document.

MR. SANDSTRUM: I'm asking him.

MS. ARMENTA: It lacks foundation.

THE WITNESS: Yes, saying I would insure together with them.

BY MR. SANDSTRUM:

Q Okay. So this is an insurance certificate for your El Cajon restaurant, correct?

A Yes.

Q Then you testified earlier, too, that you entered into a lease for the El Cajon restaurant when you first opened that restaurant, correct?

A Yes.

Q Who translated that lease and the terms of that

lease to you?
A Abelardo.
Q Anybody else?
A No.
Q On the subsequent or later leases that you signed for the El Cajon restaurant, who translated the terms of that lease to you?
A My brother-in-law.
Q Who is that?
A Manuel --
MR. SANDSTRUM: I appreciate you're trying to help, but it's important that he testifies from his own memory.
THE WITNESS: Manuel Salvador Castro.
BY MR. SANDSTRUM:
Q Is he involved in any aspect of the El Cajon restaurant?
A Yes.
Q What does he do?
A He works --
Q What does he do?
A And the answer was he works with me.
Q Doing what?
A He helps me with accounting, all accounting.
Q I want to go back a little bit again.
You testified earlier that you believed the food

items in the El Cajon restaurant menu that you used from 1998 to the date of your declaration, February 10, 2005, had similar food items as your father's original menu that he used at the Rosecrans restaurant in 1988, '89.

How do you know they're the same? Do you remember that far back?

A Because I'm a cook. I used to make the food.

Q You also testified from the 1997 to 2001 time frame that Claudia Santana --

THE INTERPRETER: Did you say 2005?

BY MR. SANDSTRUM:

Q You also testified earlier today that from the 1997 to 2001 time period that Claudia Santana only visited the El Cajon restaurant four times, correct, approximately four times?

A Yes.

Q Were you at that restaurant during that time from when it opened until it closed every day?

A No.

Q How about the same question for your brother Abelardo Santana Lee?

A I was not there all day, but I arrived by 8:00. A lot of years I started at 8:00 in the morning and leaving at 10:00 at night.

Q Were you always --

A I don't think they went there in the early hours of the morning.

Q Were you there outside in the front of the restaurant all the time?

A No.

Q It's possible they were there and you wouldn't know about it, isn't it?

A Yes, okay, yes.

Q I just want to make sure the record is clear. Before your father transferred -- strike that question.

When you first opened the El Cajon restaurant, how many days a week the first year were you there?

A Six days.

Q Six days for an entire year?

A More than a year.

Q Okay, for how long?

A From 8:00 to 10:00 at night.

Q I'm saying from the time -- the El Cajon restaurant opened early 1998 or thereabouts?

MS. ARMENTA: Objection. Misstates the witness' testimony.

MR. SANDSTRUM: Late '97, whatever.

MS. ARMENTA: '97 is the witness' testimony.

BY MR. SANDSTRUM:

Q Do you have an approximate date, month and year

as to when the El Cajon restaurant opened?

A In 1997.

Q Do you know if it was in December, November?

A In December.

Q So December 1997. Okay.

From December 1997 until December 1998, is it your testimony that you were at the El Cajon restaurant seven days a week for the entire year?

A Six days.

Q Six days for the entire year? My mistake. Is that true for the following year, as well, in 1999?

A Not all, but part, yes, more than half a year, yes.

Q So for the half part of -- first six months of 1999 you were there six days a week?

A Like every day, every day, but most of the time I was there.

Q Were you there the whole day or just to check in on things?

A All day there.

Q So for the first year and a half you were there six days a week for at least eight hours a day?

A Yes.

Q How about the last six months of 1999, how many times did you visit the restaurant each week?

A Maybe the same days, but maybe a little bit less hours.

Q By "a little bit less," two or three hours less, four or five?

A I think so.

Q Two or three or four or five?

A I think two hours, three hours.

Q How about in the year 2000, do you recall how many days a week you visited the El Cajon restaurant?

A No, I don't remember anymore.

Q Do you have any estimate as to was it two days, three days?

A No, I think about five days.

Q About five days? Do you recall on average how many hours?

A I think the same, eight hours, but I had more personnel and I worked less.

Q So it's your testimony that in 2000 you were visiting your El Cajon restaurant about five times a week for the entire year of the year 2000?

A Yes.

Q And you were there for how many hours on average a day?

MS. ARMENTA: Objection. Asked and answered.

THE WITNESS: From six to eight hours.

BY MR. SANDSTRUM:

Q How about for the year 2001, how many days a week were you there for that entire year?

A For me it's very difficult because as the business has improved, I have been moving away a little bit more. Right now, for instance, right now I come three days a -- three times a day -- three times a week, and I come five, six hours.

Q So in 2001 do you have a recollection how many days a week you went during that year?

A No, no, I would lie.

Q I don't want you to lie. Do you have an estimate? It's a long time ago.

A No, no.

Q So you just don't recall?

A No.

Q Is that the same answer for 2002?

A Yes.

Q And 2003?

A Also.

Q And 2004?

A Yes.

Q And then 2005, same answer?

A Yes.

Q And then how about 2006?

A Yes.
Q Then how about 2007?
A That's what I told you right now.
Q I wasn't sure if we were talking about 2008 that we just started or 2007.
But 2007 you visited about three times a week?
A Three, four times a week.
Q And then how many hours do you spend there?
A Four hours, five hours.
Q And what do you do generally?
A Well, I verify the sales and the bank, the money, cleaning supplies, I verify prices. That's my work.
Q Okay. So you're the sole boss there, right?
A Yes.
Q You're the top dog, right?
A (No audible response.)
Q Do you have a manager, as well?
A Yes.
Q Who is that?
A In El Cajon?
Q In El Cajon, yes.
A Geraldo Alamillo.
Q While you're out -- when you're not at the El Cajon restaurant, has he been your manager for quite a while?

MS. ARMENTA: Objection. Vague.
THE WITNESS: Yes.
BY MR. SANDSTRUM:
Q Do you have another manager, a night manager, for the El Cajon restaurant?
A Yes.
Q Who is that?
A Not with the same ability.
Q But you do have a night manager, correct?
A Yes.
Q What is his name?
A Candelario.
Q Who is responsible -- I should start presently in 2007 -- for all the money that comes in from sales?
MS. ARMENTA: Objection. Vague.
BY MR. SANDSTRUM:
Q Who is El Cajon's bookkeeper presently?
A Garcia Barret.
Q Is he responsible for depositing all monies into any type of bank for the sales from the El Cajon restaurant presently?
A No.
Q Who does that?
A I do.
Q You're aware that Abelardo Santana and your

brother, Pedro Santana, were business partners with respect to a six-unit apartment complex that was being built by your brother, Benito Santana Lee, in Tecate, Mexico; isn't that right?

A Yes.

Q And isn't it true that Abelardo and Pedro Santana were 50 -- if you know, 50 percent partners?

A No.

Q You don't know or "no," they weren't?

A No, I don't know. I don't know.

Q Isn't it true that Abelardo Santana Lee transferred his interest in that six-unit apartment complex located in Tecate, Mexico to your father?

A No.

Q Do you know one way or another that that occurred or you know absolutely that it did not occur?

A I don't know.

Q You just don't know? Okay. There's a difference between "no" and "I don't know."

A I don't know.

Q But you know that Abelardo and Pedro were business partners in that apartment -- in that Tecate apartment complex?

A Yes.

Q Do you recall exactly what date that was?

A No.
Q Do you have an estimate? Was it early '90s?
A No, no.
Q Are you getting tired?
A No.
Q Getting hungry?
A No.
THE INTERPRETER: You know what, I think the interpreter should stop pretty soon.
MR. SANDSTRUM: Do you want to take a break?
THE INTERPRETER: A little more and we have to stop.
MR. SANDSTRUM: I have a lot to go actually. I might not because I'm going off of two different notes here, but if I take a break, I can see what I can cross off.
MS. ARMENTA: Let's take a break and see if we can finish before lunch. Do you want to do that?
MR. SANDSTRUM: I'm not sure. I have a lot to do.
MS. ARMENTA: Do you want to do that and let us know?
MR. SANDSTRUM: It's 12:30. Do you want to grab a half-hour lunch and come back?
MS. ARMENTA: Can we do that? I think you need a rest.
THE INTERPRETER: I can go on but --
MR. SANDSTRUM: We want to make sure everything is accurate.

Are we still on the record?

THE REPORTER: Yes.

MR. SANDSTRUM: Let's go off the record.

(Lunch recess was taken at 12:27 p.m.)

(Reconvening after lunch at 1:09 p.m.)

BY MR. SANDSTRUM:

Q Good afternoon.

A Good afternoon.

Q We're back on the record here today, and I just want to remind you you're still under oath and you understand that you will testify as truthfully as possible, correct?

A Yes.

Q And it's important not to provide any guesses and just testify as to what you remember, okay?

A Yes.

Q As part of the opening of the El Cajon restaurant, you had filed a Fictitious Business Name Statement under the name "Santana's Mexican Grill";" isn't that correct?

A Correct.

Q And as part of that filing, didn't that statement list as the business address the address for Claudia and Abelardo Santana?

A I don't remember.

Q Earlier today, for some clarification, just so the record is clear, you were shown Petitioner's Exhibit No. 4 and asked to verify that it is a document that it purports to be, isn't that correct, that you knew what this document was, correct?

A Yes.

Q I'm a little bit confused because no one had to translate this document to you before you knew what it was.

Can you clarify that for me?

A Can you repeat the question?

Q Yes. Earlier today I handed you some documents and I asked you to look at them and tell me what they were, and you indicated you couldn't because they were not in Spanish.

MS. ARMENTA: And he had never seen them before. Objection. Misstates the witness' testimony.

BY MR. SANDSTRUM:

Q But when you were shown Petitioner's Exhibit 4, although you might be able to know what the appearance of it is, what it looks like, how do you know what it says?

A Well, right now I don't know what it says, but when I received that document that I think it was what it was, I don't remember that somebody read it to me. I don't remember if it was them or my accountant.

Q But you don't know sitting here right now that

Petitioner's Exhibit 4 is a document that is related to the El Cajon restaurant, correct?

MS. ARMENTA: Hand it to him so he can see it, please.

THE WITNESS: Actually, no, because I don't know how to read it, but if I sit down and study it, maybe -- you know --

BY MR. SANDSTRUM:

Q You would need a translator is what you're saying, correct?

A Yes, yes, they help me.

Q I just wanted to get that clarified. That's all.

Do you know where your brother, Benny Santana Lee, lives?

A In Tecate.

Q Do you know whether or not he's aware that Abelardo Santana Lee transferred his interest in those apartments in Tecate to your father in exchange for purchasing the Rosecrans restaurant from your father?

A No, I don't know.

Q Again, just for clarification on Petitioner's Exhibit 6 you indicated you knew the -- you thought you knew the age of the photograph because there was a child in the photograph, correct?

MS. ARMENTA: Objection. Misstates the witness' testimony.

THE WITNESS: I didn't use the child as a reference.
BY MR. SANDSTRUM:
Q Okay.
A I used the -- I used as a reference the orange sign which broke, and then I had that white one installed.
Q And you recall when that white sign was installed, so that's how you know how to date this photograph?
A No, I don't.
Q So you don't know when the white sign was installed, correct?
A No.
MS. ARMENTA: What exhibit number was that?
MR. SANDSTRUM: That was Petitioner's No. 6.
Q In connection with the El Cajon restaurant, does your father currently have any ownership interest in that restaurant?
A No.
Q Does he have any authority to tell you how to run that restaurant presently?
A Yes.
Q What authority does he have?
A To advise me and guide me.
Q So he has the -- as your father, he advises you and guides you and gives you suggestions on how to operate

the restaurant, but does he have the authority to make you you do those suggestions?

A No.

Q So can you run the El Cajon restaurant in any fashion you deem as the owner to be the right thing to do?

A Yes.

Q So you, as the owner of the El Cajon restaurant, could sell that restaurant to somebody who was interested in buying it, correct?

A No.

Q Why not?

A Because of my contract, I can't sell it.

Q What contract are you referring to?

MR. SANDSTRUM: Can we stop real quick? What did he say?

THE INTERPRETER: "Rental."

MR. SANDSTRUM: You're helping out, that's great, but he needs to testify.

Q We're talking about the lease agreement? So if you decided to sell the El Cajon restaurant or Spring Valley restaurant, for that matter -- strike that question. Let's deal with El Cajon.

If you decided to sell the El Cajon restaurant to an interested buyer, you could do that if the landlord was willing to sign that lease to the new buyer, correct?

A Yes.

Q You could also sell your Spring Valley restaurant to a buyer if you wanted to, if that was your decision to do so?

A Yes.

Q So, for instance, Arturo Castaneda couldn't stop you from selling that restaurant, correct?

A Yes.

Q And your brother, Abelardo, couldn't stop you from selling that restaurant, correct?

A Yes.

Q And your father couldn't stop you from selling that restaurant, correct?

A Yes.

Q If you decided to stop -- if you decided to sell hamburgers at your restaurant, since you're the boss, you could make that decision, correct?

THE INTERPRETER: Can you repeat that?

BY MR. SANDSTRUM:

Q If you decided to sell hamburgers along with your other food items, since you're the boss, you could do that, correct?

A Yes.

Q And that's your sole decision, correct?

A Yes.

Q Are you aware of whether or not you and Arturo Castaneda -- do you guys use the same vendors for tortillas?
A Yes.
Q How about for meats?
A Sometimes and sometimes not.
Q How do you decide to choose a specific vendor? What do you look for?
A Price and flavor.
Q By "flavor" do you mean quality of the meat?
A Yes.
Q So, obviously, you're looking for the best price for the best type of meat you can get?
A Yes.
Q Do you currently do any advertising for the El Cajon or the Spring Valley restaurants?
A No.
Q Have you ever done any advertising for the El Cajon restaurant?
A Yes.
Q What type of advertising?
A On television.
Q Do you know what channel?
A No.
Q Did you do that -- do you know what years you did

that?

A No, I don't remember.

Q Was it a long time ago?

A Yes.

Q Did it run for a long period of time?

A I think months.

Q Any other advertising you can think of?

A No, I don't remember, no.

Q How many employees -- let me back up. Strike that question.

Do you do any advertising for the Spring Valley restaurant location?

A No.

Q How many employees do you have presently at the El Cajon location?

A Ten.

Q Is that the same number for Spring Valley?

A Yes.

Q Are they different employees or do they work at each restaurant?

A Different employees.

Q I take it you use the same ingredients at the Spring Valley restaurant as you do at the El Cajon restaurant, correct?

A Yes.

Q Are there times you use a different vendor and use different meats, a quality of meat, at Spring Valley versus El Cajon?
A The same always.
Q So you always use the same vendors for both restaurants?
A Yes.
Q I just want to make sure I'm clear on -- let me ask this question: How did your father assist you, if at all, in setting up the El Cajon restaurant?
A He did help me.
Q In what way, though?
A He helped me with money to do it.
Q So he lent you some money?
A Yes.
Q Do you recall how much?
A No.
Q Have you repaid that money?
A No.
Q Do you recall if it was over $100.00, $1,000?
A More than $1,000.
Q Under $5,000?
A More than 5,000.
Q Under 10,000?
A He lent me and he supported me a year and a half

while my business worked or functioned.

Q I'm sorry, I don't recall if I remembered your answer, have you repaid that to your father yet?

A No.

Q How much do you owe him now?

A I really wouldn't be able to tell you.

Q So as you sit here today, you don't recall how much money you owe your father that he lent you for the El Cajon restaurant?

A Well, maybe I answered wrong.

Q Okay.

A He didn't lend me, he gave me.

Q Okay, so it was a gift?

A Yes. And he gave me that money because we had a business in Mexico, and we sold a lot of equipment, and with that I supported myself.

Q So if I understand your testimony, the money came from the sale of equipment in Mexico that you had an interest in, correct?

A Yes.

Q So when the equipment was sold, you took portions of that money, correct?

A Yes.

Q So it wasn't a gift?

A It was a gift.

Q Well, I thought you just testified that you had an interest in the equipment that was sold.

A That's right. I had interest in it because we were a family where all of us worked, and I received salary, and I have always thought that I worked with him and I worked for everybody, and that's the way I thought all the time. When I had the opportunity to open a restaurant, my father sold equipment and helped me.

Q I understand that part, he sold the equipment, but what I don't understand is that you testified earlier you had an interest in that equipment, correct? You were almost like a co-owner of that equipment, correct?

A Like I was part owner of that -- the way that I was part owner in that equipment is how I had part working in Yucca Valley and I had part working at Rosecrans because we were a family that we worked together.

Q Did your father assist you with the opening of the Spring Valley restaurant location, which I believe you said opened in 2003?

A No.

MS. ARMENTA: Objection. Vague.

BY MR. SANDSTRUM:

Q Did you understand the question?

A Yes.

Q So --

MS. ARMENTA: Objection. Vague.
BY MR. SANDSTRUM:
Q So we're clear, did your father assist you in opening up the Spring Valley restaurant location?
MS. ARMENTA: Same objection.
THE WITNESS: No.
BY MR. SANDSTRUM:
Q Did your father help you with setting up the Spring Valley restaurant location?
MS. ARMENTA: Same objection.
THE WITNESS: No.
MR. SANDSTRUM: She keeps objecting on vague grounds, so I'm trying to make sure you understand the question. That's all.
MS. ARMENTA: I will continue to place my objection on the record to the extent I feel it's appropriate. You can ask the question and you will get your answer, and if the objection is sustained, then it's sustained.
MR. SANDSTRUM: No, I completely appreciate that. I just want to make sure we have a clear record and that I understand his testimony, so when you object as to vague, I'm trying to make sure the record is clear so people who read this later can get to the truth.
MS. ARMENTA: Well, I don't think his answer is going to change whether I object or not, but I have to do that to

preserve my record.

MR. SANDSTRUM: I have nothing against that.

You have a very good attorney.

I'm going to mark as Respondents' Exhibit 3 a two-page document.

(Exhibit R-3 was marked for identification.)

MR. SANDSTRUM: I'm going to represent it appears to be a menu with the name "Santana's Mexican Food...Es Muy Bueno."

Q I'm going to show it to the witness and I'm going to ask you if you know what that is or whose menu that is?

A This menu is Arturo's.

Q By "Arturo's," you mean Arturo Castaneda?

A Yes, Castaneda.

Q Can you look at the second page and make sure you're absolutely sure.

A (No audible response).

Q The witness says "yes," this is a menu he believes is one of Arturo Castaneda's.

MS. ARMENTA: Objection to recharacterization of the answer. The witness did not answer "yes."

MR. SANDSTRUM: I'm going to mark as Respondents' Exhibit 4 a two-page document that appears to be another menu for Santana's Mexican Food.

(Exhibit R-4 was marked for identification.)

BY MR. SANDSTRUM:

Q I'm going to show Respondents' Exhibit 4 to the witness and ask him, have you ever seen this before?

A Yes.

Q Could you tell me what it is?

A It's a menu.

Q And do you know whose menu?

A It belongs to Arturo Castaneda.

Q Have you ever been to -- strike that question. Which restaurants -- strike that question.

How many restaurants does Arturo Castaneda currently own which are called "Santana's Mexican Food"?

A I don't know.

Q Have you ever been to Arturo Castaneda's restaurant in Riverside?

A No.

Q How about his restaurant -- when I say his restaurant, I mean Santana's Mexican Food restaurant -- in Sun City?

A Yes.

Q How many times have you been to that restaurant?

A Twice.

Q Have you ever been to his restaurant in Sun Valley -- I'm sorry, 29 Palms, California?

A No.

MR. SANDSTRUM: Let's go off the record.

(An off-the-record discussion was held.)

BY MR. SANDSTRUM:

Q Have you ever been to Arturo Castaneda's Santana's Mexican Food restaurant in Joshua Tree, California?

A No.

Q Have you ever been to Arturo Castaneda's restaurant called "Santana's Mexican Food" in Chula Vista, California?

A No.

Q Were you aware at one point that that restaurant was called "Jillian's Taco Shop," as well as "Santana's Mexican Food"?

A No.

Q I believe you testified that you were at the Sun City Santana's Mexican Food owned by Arturo Castaneda about three times, correct?

A Twice.

Q What was the purpose of the visit?

A I went because we were going to see about this problem where over there you have the office, what is the place called, the city --

Q Hold on, let me just stop real quick. You can't get answers from somebody else --

A Sorry.

Q -- or try to.

MS. ARMENTA: Just for the record, the witness was looking at his attorney.

MR. SANDSTRUM: I understand. I just want to make sure we're all on the same page.

THE WITNESS: Because we were going to see to talk about this problem and we were going to go with Arturo there, and from there we would go to the attorney's offices.

BY MR. SANDSTRUM:

Q That's all I need to know. What I'm going to do to speed this up a little bit -- you already indicated you have not been to the Arturo Castaneda restaurant in 29 Palms and Riverside.

A No, I haven't.

Q Nor Chula Vista, correct?

A No.

Q Have you ever seen any photographs of Arturo Castaneda's restaurants which you have not been to?

MS. ARMENTA: Objection. Calls for speculation.

THE WITNESS: What I have seen is -- what I've seen is the menu only.

BY MR. SANDSTRUM:

Q Just so I'm clear, you have never seen

photographs of Arturo Castaneda's restaurant in 29 Palms, correct?

MS. ARMENTA: Same objection.

THE WITNESS: What I have seen on the menu.

BY MR. SANDSTRUM:

Q Besides the menus we just talked about, correct?

MS. ARMENTA: Same objection.

THE WITNESS: Yes.

BY MR. SANDSTRUM:

Q The same, you haven't seen any photographs of Arturo Castaneda's restaurant located in Riverside, correct?

MS. ARMENTA: Same objection.

THE WITNESS: What I have seen on the menus.

BY MR. SANDSTRUM:

Q Other than what you have seen on the photographs you've seen on Exhibit R-4 and Exhibit R-3, those are the only photographs you have seen to date of Arturo Castaneda's restaurants, correct?

A Yes.

MR. SANDSTRUM: I'm going to mark as Respondents' Exhibit 5 what appears to be a menu with the "Santana's Mexican Grill" in a triangle saw-toothed pattern logo around it.

(Exhibit R-5 was marked for identification.)

BY MR. SANDSTRUM:

Q I'm going to show Respondents' Exhibit 5 to the witness, and is this a copy of your current menu that you utilize at both the Spring Valley location and El Cajon location?

A Right now I'm not using it, but I did use it. I don't use it anymore.

Q And how long ago -- when did you use this menu?

A I don't remember the dates.

Q Was it more than a year ago?

A Yes.

Q Do you use a menu similar to this menu?

MS. ARMENTA: Objection. Vague.

THE WITNESS: Yes.

BY MR. SANDSTRUM:

Q Can you look at Exhibit R-5 and tell me what differences are between the menu you use today generally versus this exhibit?

A The sauces, menudo.

Q Besides the food items, is the appearance, the format of that menu the same looking menu as you use today?

A Yes.

Q So it looks alike, but you might have different food items on it?

A Yes.

MS. ARMENTA: What exhibit number was that?

MR. SANDSTRUM: R-5.

Q What made you want to come back from Mexico in 1997 to open a Mexican restaurant?

A Because I did not have success.

Q Where?

A In Mexico.

Q Any other reasons at all?

A No.

Q Wasn't it because you saw how successful your brother, Abelardo Santana Lee, was and Claudia Santana were in running the Santana's Mexican Food restaurants they owned?

THE INTERPRETER: I didn't hear the last part.

MR. SANDSTRUM: I'll just repeat the question.

Q Wasn't it also because you saw how successful your brother, Abelardo Santana Lee, and your former sister-in-law, Claudia Santana, were in operating their Santana's Mexican Food restaurants?

A No.

Q Not at all?

A Not at all. Can I continue?

Q Yes.

A I did it because it's the only thing that I know, that I knew how to do, aside from the machinery, so I had

no other option but to do what at one time was good for me, I was successful at.

Q When you came back in 1997 to the United States, isn't it true that Abelardo Santana Lee and Claudia Santana retrained you in how to run a Mexican restaurant business because you had been out of it for so long?

MS. ARMENTA: Objection. Vague.

THE WITNESS: No, they did not train me.

BY MR. SANDSTRUM:

Q I said retrained you.

A No.

Q So after being out for five years, you didn't need anybody's assistance in how to do the payroll, the bookkeeping?

A Yes.

MS. ARMENTA: Objection. Misstates the witness' testimony.

BY MR. SANDSTRUM:

Q How to -- they didn't have to retrain you how to line up the vendors, suppliers, accountants?

MS. ARMENTA: Same objection.

THE WITNESS: About the vendors, they helped me with, and they told me buy from him. I went and hired a Garcia Barret, who is my accountant, and he was the one that told me how to do everything that had to do with accounting.

BY MR. SANDSTRUM:

Q But isn't it true that Claudia Santana Lee set up your bookkeeping? Isn't that true? Strike that question.

Isn't it true that Claudia Santana set up the bookkeeping for the El Cajon restaurant?

A No.

Q Isn't it true she set up the banking for the El Cajon restaurant?

A I'm not sure, but I don't think so.

Q Isn't it true that Claudia Santana set up the payroll for the El Cajon restaurant?

A The same, I don't think so.

Q Who do you think did it, then?

A Manuel Salvador Castro, my brother-in-law.

Q Does he reside in the United States?

A Yes.

Q In San Diego?

A Yes.

Q Do you know his address?

A No.

Q Do you know his telephone number?

A No.

Q Isn't it true that Claudia Santana set up the electricity for the El Cajon restaurant?

A Yes. She on the phone -- the contract, the

electricity contract.

Q As well as the telephone system?

A Yes.

Q And she also set up the water, sewer, as well, right?

A I don't remember because there's a person whose name is Manuel -- no, excuse me, Miguel Duran, that he also helped me to get a lot of permits, but I don't remember which ones they were.

Q Do you recall whether Claudia Santana set up the waste disposal system or service for the El Cajon restaurant?

A It could be, yes. She helped me a lot.

Q Isn't it true that Miguel was an employee of Abelardo and Claudia Santana during this time period when the El Cajon restaurant was being set up?

A I don't know. Miguel Duran still works helping me, helping several people that had restaurants.

Q Weren't you, yourself, an employee of Claudia Santana and Abelardo Santana at the end of 1997?

A Okay, repeat.

Q Weren't you an employee of Abelardo Santana -- weren't you paid by Abelardo Santana in late 1997?

A No.

Q So in 1997, the latter half of 1997, you were not

an employee of Abelardo Santana and Claudia Santana?

MS. ARMENTA: Objection. Vague as to time.

THE WITNESS: No.

BY MR. SANDSTRUM:

Q Were you employed during -- an employee at all during 1997 of Claudia Santana and Abelardo Santana?

A No.

Q So you never received any type of paycheck from Abelardo Santana in 1997?

A No.

Q Do you have any say whatsoever how Arturo Castaneda operates the restaurants that he owns that are called "Santana's Mexican Food"?

A No.

Q Do you run your Santana Mexican Grill restaurant separately from the way Arturo Castaneda runs his restaurant?

A No.

MS. ARMENTA: Objection. Vague and calls for a legal conclusion.

BY MR. SANDSTRUM:

Q So you do not run your restaurant independently from that of Arturo Castaneda?

MS. ARMENTA: Same objection.

THE WITNESS: I run my restaurants totally independent

from the restaurants that belong to Arturo Castaneda.
BY MR. SANDSTRUM:
Q We're on the same page. That is what I was trying to find out.
Are you aware of what specific ingredients that Arturo Castaneda utilizes in his food items that he serves?
A No.
Q A quick question, on the menu we spoke about that is attached to Respondents' Exhibit 1, and I'll show it to you real quick, do you recall when you stopped utilizing not the food items, but this format, the way this menu looks?
A No.
Q Do you have an estimate at all when you stopped using it?
A No.
Q Your declaration is dated February 10, 2005.
Do you have an estimate whether you stopped using it in 2006?
A No.
Q Isn't it true you also run your restaurants wholly independent from how Abelardo Santana and Claudia Santana run their restaurants presently?
MS. ARMENTA: Objection. Calls for a legal conclusion.

THE WITNESS: Totally independent.
BY MR. SANDSTRUM:
Q Isn't it true until -- strike that question.
Do you know the name of Abelardo Santana's corporation?
A No.
Q Does "Santana's Grill" ring a bell?
A Oh, Santana Mexican Grill, Inc.
Q You understand that's the name of Abelardo Santana's corporation?
A Well, that's the name that they used, but I don't know if it belongs to them.
MS. ARMENTA: I just want to place an objection that I think there's a major disconnect between the witness and the interrogating attorney. You might want to re-cover that.
MR. SANDSTRUM: We don't want a disconnect, that's for sure.
Q Do you recall -- it's your understanding that the corporation that your brother, Abelardo Santana, owns is called Santana's Mexican Grill, Inc., correct?
A Yes.
Q Do you have an understanding who brought a lawsuit against you in federal court for trademark infringement?

A Abelardo and Claudia, yes.

Q So it's your understanding that Abelardo and Claudia Santana personally are suing you for trademark infringement?

MS. ARMENTA: Objection. Misstates the witness' testimony and calls for a legal conclusion, and I might add also that the witness is not sophisticated in corporate names and the language lawyers try to elicit from them. And Ms. Santana does not need to make comments on the record.

MR. SANDSTRUM: I think she made a comment, but let me try to speed this up.

Q Just so the record is clear, because that's the whole purpose, I'll represent to you that Abelardo Santana's corporation is called Santana's Grill, Inc., okay, and it's Santana's Grill, Inc. who filed a lawsuit in the federal court.

MS. ARMENTA: I'm going to interrupt. I'm sorry, but your client is sitting here nodding and smiling and making faces --

MR. SANDSTRUM: Let's go off the record.

MS. ARMENTA: -- and comments. No, we're staying on the record. If she can't control herself, I'm going to ask you to designate one corporate designee on behalf of Santana's Grill and one of them can be in the room.

MR. SANDSTRUM: I can ask under 615 we exclude a lot of witnesses from this room.

MS. ARMENTA: My witnesses are behaving.

MR. SANDSTRUM: Well, I have a right to --

MS. ARMENTA: There we go again.

MR. SANDSTRUM: -- exclude witnesses.

MS. ARMENTA: Could you just, please, as a matter of courtesy, ask your client to conduct herself as she would if she were in a courtroom.

MR. SANDSTRUM: I have not observed her do anything improper --

MS. ARMENTA: Turn to the side and you'll see.

MR. SANDSTRUM: -- so I can't instruct her, but I will instruct her to be quiet if she is saying anything.

MS. ARMENTA: Thank you.

MR. SANDSTRUM: Now I lost my train of thought.

Q So we're clear, Santana's Grill, Inc. -- the first time you ever objected to Abelardo Santana's use of the name "Santana's Mexican Grill" was after he filed -- after his corporation filed a lawsuit against you; isn't that correct?

MS. ARMENTA: Objection. Misstates the witness' testimony.

THE WITNESS: I used the name of "Santana's Mexican Grill" before they did that.

MR. SANDSTRUM: I want to move to strike, nonresponsive.

Q My question was, the first time that you objected to Abelardo Santana and Claudia Santana or Santana -- the corporation, Santana's Grill, use of the "Santana's Mexican Grill" name was after they had filed a lawsuit against you; isn't that true?

MS. ARMENTA: Same objection and assumes facts not in evidence.

THE WITNESS: I never opposed to any of that because I never realized that they were doing that.

BY MR. SANDSTRUM:

Q Well, did you realize that Abelardo Santana and Claudia Santana had opened up a restaurant in Midway by July of 1998, correct?

A Yes.

Q And you did not -- go ahead.

A Yes, because some time before that I opened and we had the plan of the grilled meat or asada with -- on the grill with charcoal.

MR. SANDSTRUM: Can you read that answer back?

(The record was read.)

BY MR. SANDSTRUM:

Q I'm still a little unclear, so I'll try to clarify.

You're aware that Abelardo Santana and Claudia Santana opened a restaurant on Midway Drive in San Diego by July or the summer of 1998, correct?

A Yes.

Q And you never objected to them using the name "Santana's Mexican Grill" until after their corporation filed a lawsuit against you; isn't that true?

MS. ARMENTA: Objection. Misstates the witness' testimony and assumes facts not in evidence.

BY MR. SANDSTRUM:

Q What was the answer?

A "Yes."

Q Out of curiosity I have a question.

You testified earlier that you respect your father's advice and you follow your father's advice, correct?

A Yes.

Q How come you didn't call the El Cajon restaurant "Santana's Mexican Food"? Why did you change the name?

MS. ARMENTA: Objection. Asked and answered.

THE WITNESS: Can you ask the question again?

BY MR. SANDSTRUM:

Q Instead of using the name "Santana's Mexican Food," which your father used first at the Rosecrans restaurant, why didn't you continue to use that name?

MS. ARMENTA: Objection. Asked and answered.

THE WITNESS: I used "Santana's Mexican Grill" because I wanted to grill meat on a grill with charcoal.

BY MR. SANDSTRUM:

Q Did you consult your father that instead of using the name "Santana's Mexican Food" you wanted to use "Santana's Mexican Grill" on your El Cajon restaurant before it opened?

A No, I don't think so.

Q Are you aware whether or not Corona, the maker of the beer, filed a lawsuit against your father or whether they just demanded that he stop using the name "Corona's" or "Corona"?

A I don't know if they sued or not, but we didn't have any problem with them because a friend, one of Benito's friend, my brother's, I think he talked with somebody from Corona, a friend of his or a relative, and they just said just take it away or remove it, and the problem is over.

MR. SANDSTRUM: Why don't we take a five-minute break so I can go over my notes.

(A recess was taken.)

MR. SANDSTRUM: It was great speaking with you, but I have no more questions at this point, but I'm sure your counsel does.

THE WITNESS: Thank you.

MS. ARMENTA: I'll make it very brief.

REDIRECT EXAMINATION

BY MR. ARMENTA:

Q Very briefly, I just have a few questions.

At the time that you were the owner of the Yucca Valley restaurant and you were working there -- and we're talking about the early 1990s or the late 1980s -- do you have that time period in mind?

A Yes.

Q You indicated you owned the business that was the restaurant; is that right?

MR. SANDSTRUM: Hold on. I want to object it calls for a legal conclusion and assumes facts not in evidence.

MS. ARMENTA: Let me rephrase the question.

Q What is your understanding of what it was that you owned at that time in connection with the Yucca Valley restaurant?

A I was the owner, but in reality I couldn't even sell the restaurant, I could not do anything except accept whatever my father said.

Q During that time period, did your father have the right to remove you from the ownership or whatever it was that you had in connection with the Yucca Valley

restaurant?

A Yes.

Q Now, let me hand you Petitioner's No. 6.

When Mr. Sandstrum was asking you questions, you indicated you couldn't be sure what year that picture was taken, but let me have you study the picture again and if you could give me a range of dates as to when that picture was taken.

MR. SANDSTRUM: I'll object it lacks foundation, calls for speculation, it's been asked and answered.

BY MS. ARMENTA:

Q Let me ask you this: Focusing on the sign that's indicated in the picture, did you have any participation in the creation or mounting of that sign?

MR. SANDSTRUM: Objection. Asked and answered.

THE WITNESS: Yes.

BY MS. ARMENTA:

Q What participation was that?

MR. SANDSTRUM: Objection. Asked and answered.

THE WITNESS: I cut the letters, and I installed the letterhead -- sign.

BY MS. ARMENTA:

Q Did you take these actions during the time that you were acting as the owner at Yucca Valley in the late 1980s, early 1990s?

MR. SANDSTRUM: Objection. Leading, asked and answered, lacks foundation, calls for speculation.

MS. ARMENTA: Let me rephrase the question.

Q What job did you have at the time that you took those actions that resulted in the installation of the sign?

A I was the owner in charge of the restaurant.

Q Was this before you went back to Mexico?

A Yes.

MR. SANDSTRUM: Objection. Lacks foundation.

BY MS. ARMENTA:

Q I notice the sign has the words "Es Muy Bueno" on it.

A Yes.

Q Did that sign have those words at the time that you installed it?

MR. SANDSTRUM: Objection. Vague and ambiguous, lacks foundation, calls for speculation.

THE WITNESS: Yes.

BY MS. ARMENTA:

Q Where did you get that phrase from that appears on that sign?

MR. SANDSTRUM: Objection. Asked and answered, lacks foundation.

THE WITNESS: That phrase came out of an ad in the

radio that we had in Yucca Valley.

MS. ARMENTA: Thank you.

Q When Claudia Vallarta-Santana and Abelardo Santana assisted you in setting up the El Cajon restaurant, did you ever agree that the El Cajon restaurant would be part of a plan to create a chain of restaurants?

A No.

MS. ARMENTA: I don't have any further questions.

MR. SANDSTRUM: I just have one more question.

RECROSS-EXAMINATION

BY MR. SANDSTRUM:

Q Isn't it true that upon your father's passing away, you stand to inherit all of his assets, including his purported ownership of the name "Santana's Mexican Food" or "Santana's Mexican Grill?

MS. ARMENTA: Objection. Exceeds the scope of direct, cross, recross, and I think it might invade Mr. Santana Gallego's privacy.

MR. SANDSTRUM: It goes to motive, that's all.

MS. ARMENTA: Lacks foundation, calls for speculation, and I need to confer with Mr. Santana Gallego to find out if it's private before I'll let Mr. Santana answer the question.

MR. SANDSTRUM: Let me rephrase the question.

Q Do you stand to inherit upon your father's death the name "Santana's Mexican Food" or "Santana's Mexican Grill" in association with Mexican restaurant services, his purported ownership?

MS. ARMENTA: Same objections. I'd like to confer with Mr. Santana Gallego.

MR. SANDSTRUM: No.

MS. ARMENTA: I'm sorry --

MR. SANDSTRUM: It's either object as it's a right to privacy and instruct him not to answer or -- I don't think we need to take a break.

MS. ARMENTA: I can't because I don't know whether or not the objection based on privacy is well stated unless I speak with Mr. Santana Gallego and ask him if he has made such a plan and if he has kept that plan private from his sons and from his family or if it's something that he shared with everyone. I have no idea.

But I'm not going to let the young Mr. Arturo Santana answer the question unless I know the elder Mr. Santana's position with respect to the answer.

MR. SANDSTRUM: I want to accommodate you on that. I'm not sure this is the setting.

MS. ARMENTA: That's okay, I'll accommodate myself.

Mr. Santana Gallego, can I speak with you, please.

MR. SANDSTRUM: Let me note for the record --

MS. ARMENTA: That Mr. Santana Gallego is leaving the room with counsel.

MR. SANDSTRUM: That's okay. I just want to make sure it's noted for the record.

(A recess was taken.)

MS. ARMENTA: Back on the record.

Same objection, but the witness can answer, if you know. The witness can answer if he knows.

MR. SANDSTRUM: "Yes" or "no."

MS. ARMENTA: If he has a "yes" or "no" answer.

THE WITNESS: I imagine not because my father, what he has always done is for everybody, not only for me, and he has helped my sister, my brothers, he has helped all of us, all of us.

BY MR. SANDSTRUM:

Q Let me ask another question. Isn't it --

Let's go off the record.

(An off-the-record discussion was held between Mr. Sandstrum and his clients.)

MS. ARMENTA: Just for the record, again, Counsel is conferring with his client, as well.

MR. SANDSTRUM: All right. No more questions. Thank you so much.

///

(Whereupon, the following stipulation was agreed upon by counsel in the Deposition of Claudia Vallarta-Santana, taken Monday, January 28, 2008:

"MS. ARMENTA: We are going to dispense with any notarization requirement in connection with the record.

The court reporter will prepare the original transcript and provide it to Mr. Sandstrum within 30 days.

How long will it take to prepare? Not long.

After Mr. Sandstrum has received it, the witness will have 30 days to review, sign it and make any corrections under penalty of perjury.

An expedited copy of the transcript in an electronic version is to be delivered to me so that I may submit it to the Trademark Office.

MR. SANDSTRUM: Let me think about that real quick. Let's go off the record.

(An off-the-record discussion was held.)

MS. ARMENTA: Mr. Sandstrum and I have agreed that in an effort to comply with the greatest exactitude with the TTAB requirements, when I file the Notice of Reliance on behalf of the petitioner, I will attach any deposition transcripts referenced to the Notice of Reliance and serve those on Mr. Sandstrum at the time the Notice of Reliance is filed.

MR. SANDSTRUM: And there might be a separate section

where the document itself, the notice of service is called something different. I just can't recall off the top of my head, but I'm stipulating to that right now. That's good.")

(Whereupon, the proceedings concluded at 2:37 p.m.)

* * *

Declaration Under Penalty of Perjury

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

EXECUTED this_____day of_____,

20__, at_____,_____.

(city) (state)

_____

ARTURO SANTANA LEE

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, LEXANN CHRISTY, CSR No. 7932, in and for the state of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were duly sworn; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript [ ] was [ ] was not requested.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: July 12, 2008

LEXANN CHRISTY
CSR NO. 7932

I, _____, a certified interpreter in and for the State of California, do hereby certify that I have read and translated this deposition to the deponent, _____, to the best of my ability.

I state so under penalty of perjury under the laws of the State of California.

Executed this _____ day of _____, 20___, at _____, California.

_____
Interpreter

LASER BOND FORM A © PENGAD • 1-800-631-6989

REPORTER'S CERTIFICATION OF CERTIFIED COPY

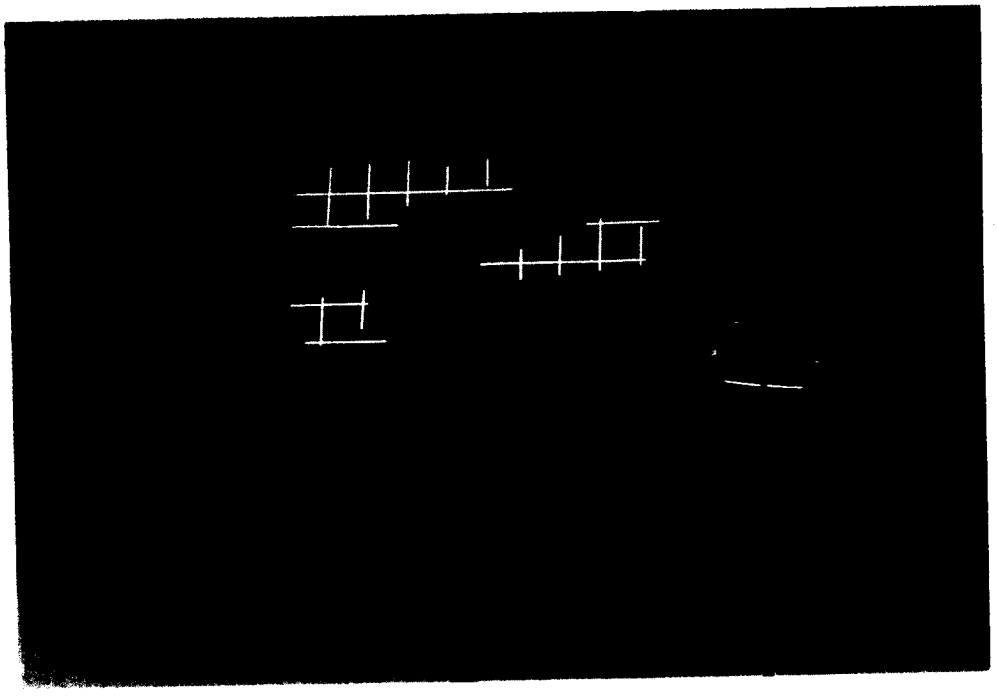
I, LEXANN CHRISTY, Certified Shorthand Reporter, Certificate No. 7932, for the State of California, hereby certify:

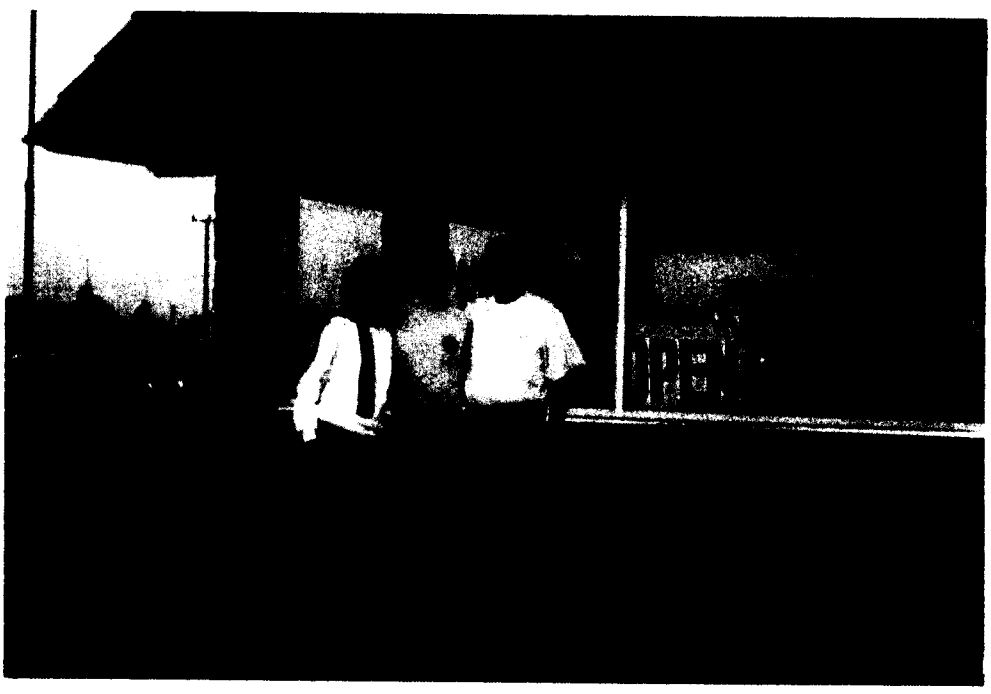
The foregoing is a true and correct copy of the original transcript of the proceeding taken before me as thereon stated.

Dated: July 12, 2008

LEXANN CHRISTY, CSR 7932

LASER BOND FORM A ® PENGAD • 1-800-631-6989

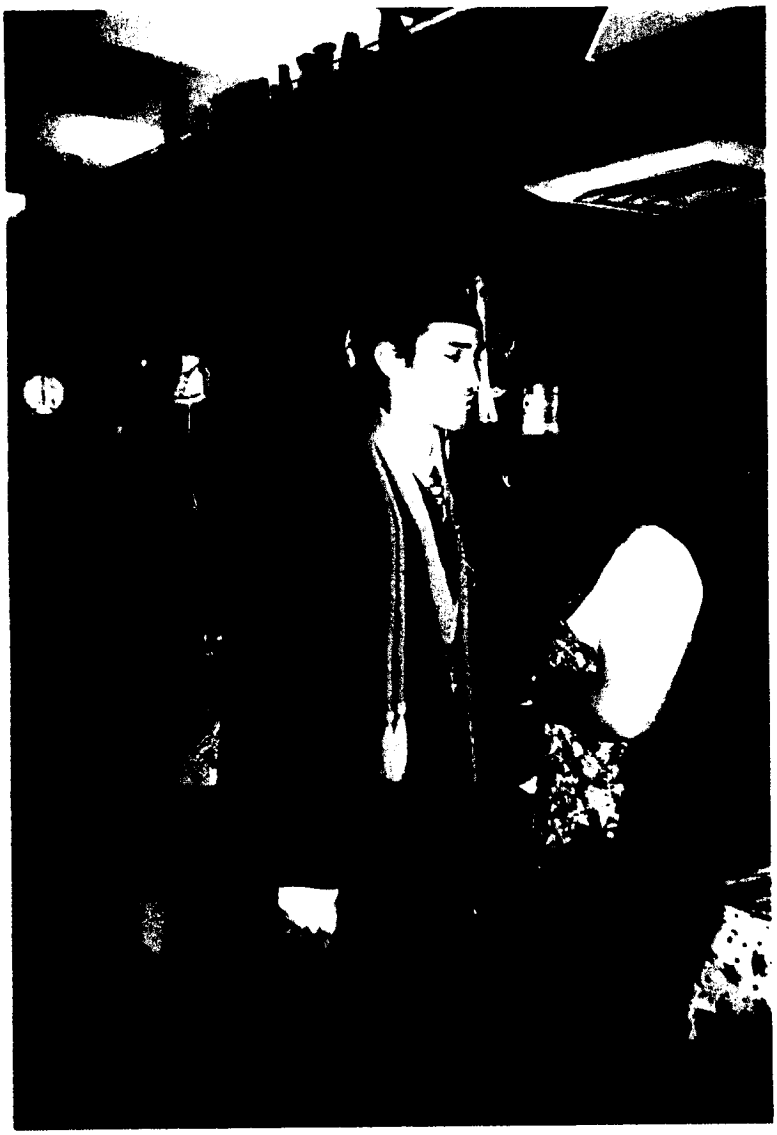




Petitioner's Exhibit No. 5
Case No. 92043152
Gallego vs. Santana's Grill

Petitioner's Exhibit No. 10
Case No. 92043152
Gallego vs. Santana's Grill

Petitioner's Exhibit No. 7
Case No. 92043152
Gallego vs. Santana's Grill



Petitioner's Exhibit No. 6
Case No. 92043152
Gallego vs. Santana's Grill

DECLARATION OF ARTURO SANTANA LEE

1. I, Arturo Santana Lee, am a Permanent Resident Alien to the United States.

2. Attached as Exhibit A are true and correct copies of photographs taken of the Yucca Valley Restaurant located on Twenty-Nine Palms (Highway 62) in around 1988 or 1999. It is easy to tell the age of the pictures because of the current age of the baby picture in the photograph, a family member.

3. Attached as Exhibit B are true and correct copies of the menu from the El Cajon Restaurant.

4. Attached as Exhibit C are true and correct copies of the menu from the restaurants owned by my brother's corporation, Santana's Grill, Inc. ion are true and correct.

5. I declare further that all statements made herein of my own knowledge and belief are believed to be true and that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code.

Arturo Santana Lee
ARTURO SANTANA LEE

Dated: February 10, 2005

* * *

Certification of Counsel:

I, Maria Cristina Armenta, certify and declare that I have translated and read this declaration to Arturo Santana Lee, and that he has understood and acknowledged the matters contained in the above declaration.

MARIA CRISTINA ARMENTA

Dated: February 10, 2005

Respondent's Exhibit No. 1
Case No. 92043152
Gallego vs. Santana Grill
3 pages

218153.1

Tab 9 - B

SANTANA'S MEXICAN GRILL

... Es Muy Bueno

HOME OF CALIFORNIA BURRITO

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

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

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

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

COMBINATION PLATES

(INCLUDES RICE AND BEANS)

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

QUESADILLAS

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

CHIPS

1.- PLAIN.....1.00
2.- WIHT CHEESE OR SALSA.....1.50
3.- WIHT CHEESE & GUACAMOLE.....3.25
4.- CHIPS OR FRIES WIHT CHEESE, GUACAMOLE, SOUR CREAM, MEXICAN SALSA, CARNE ASADA OR CHICKEN.....4.50

TOSTADAS

(WITH BEANS, SOUR CREAM, CHEESE AND LETTUCE)

1.- BEEF * BEANS * CHICKEN * CARNITAS.....2.10
2.- FLYING SAUCER CHICKEN OR BEEF.....3.50

BURRITOS

1.- CALIFORNIA BURRITO WITH POTATOES, SALSA, CHEDDAR, CARNE ASADA OR CHICKEN.....3.00
2.- CARNE ASADA * CARNITAS * GRILLED CHICKEN WITH SALSA & GUACAMOLE.....3.00
3.- FISH CABBAGE, SALSA & WHITE SAUCE.....3.00
4.- 1 LB. GREEN PORK WITH RICE AND BEANS INSIDE.....3.00
5.- BEANS.....1.75
6.- ACHIOTE CHICKEN.....2.50
7.- SHRIMP WITH RICE, BEANS & SOUR CREAM INSIDE.....3.75
8.- CHIMICHANGA CHICKEN OR BEEF.....3.75

TORTAS

(WITH GUACAMOLE AND LETTUCE)

1.- CARNE ASADA * HAM & CHEESE *CHICKEN * BEEF * CARNITAS.....2.75

EXTRAS

(ONLY INSIDE TOUR ORDER)

1.- RICE * BEANS * SOUR CREAM * CHEESE MEXICAN SALSA * LETTUCE.....0.40
2.- GUACAMOLE.....0.60
3.- CHICKEN * CARNE ASADA * CARNITAS FISH.....1.25

TACOS

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

ENCHILADAS

(WITH CHEDDAR AND LETTUCE)

1.- CHICKEN * CHEESE * BEEF.....3.25

SIDES

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

REFRESHMENTS

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

DAILY SPECIAL

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

BREAKFAST

(INCLUDES RICE AND BEANS)

1.- MACHACA O CHORIZO PLATE.....3.75
2.- HUEVOS RANCHEROS.....3.00
3.- EGGS SALSA & CHEESE.....3.00
4.- SCRAMBLED EGGS WITH HAM OR BACON.....3.00

BURRITOS

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

TORTAS

(WITH LETTUCE AND GUACAMOLE)

1.- MACHACA TORTA.....2.60
2.- CHORIZO TORTA.....2.60
3.- EGGS SALSA & CHEESE.....2.60

asada de ano
4.64.04.62

294.
I-3

RESTAURANT PACKAGE DECLARATIONS ☐

MEMBER OF FARM[redacted]ES
HOME OFFICE: 4680 Wilshire Blvd., Los Angeles, California 90010

[redacted]

Mailing Address [redacted]

K353250 Prod. Count

Prematic Acc't. No.

99-51-0376	[redacted]75
Agent	Policy Number

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

The named insured is an individual unless otherwise stated: [redacted] ☐ Corp. ☐ Other

Type of Business: RESTAURANT

3. Po[redacted] (Not prior to time applied for) [redacted]

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

DO NOT PAY THE AMOUNT DUE
YOUR POLICY IS ON THE MONTHLY PAYMENT PLAN
[illegible] your monthly statement from
PREMATIC SERVICE CORP.
[illegible] ADJUSTMENT WILL BE MADE on your future monthly statements. Please pay the amount shown on an outstanding Prematic Statement.

Mortgagee:

Loan #

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

attached at inception

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

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

	COVERAGES	LIMITS OF INSURANCE	DEDUCTIBLE
SECTION I Property and Loss of Income	Building	$ 0	$250 applies unless x'd below ☐ $500 ☒ $1000 ☐ $
	Business Personal Property	$ 80,000	
	Loss of Earnings: ☒ 25% ☐ 33⅓% ☐ 16⅔% ☐ 8⅓%	$ 24,000	NONE
	Accounts Receivable	$ 5,000	Above deductible applies unless other option indicated $
	Valuable Papers	$ 5,000	$
	☒ Building Glass (Blanket)	REPLACEMENT COST	$ 100
	☒ Outdoor Sign Coverage	$ 5,000	$ 100
	☐ Earthquake Coverage	0	☐ % ☐ 5% ☐ 15%
	Building:	0	of the applicable Ins. Limit
	Business Personal Property:		
SECTION II Liability and Medical	Business Liability	LIMITS OF LIABILITY EACH OCCURRENCE	$5,000 DEDUCTIBLE APPLIES TO ADVERTISING INJURY ONLY SEE POLICY
	The completed operations and products hazards combined is an aggregate limit of liability for all occurrences during the policy period.	$ 1,000,000	
	Fire Legal Liability	$ 150,000	
	Medical Payments to Others $5,000 ea. person	$ 25,000	
	☐ Liquor Liability	$ 0	
SECTION III Crime		LIMITS OF INSURANCE	DEDUCTIBLE
	☐ Agreement I - Employee Dishonesty	$ 0	NONE
	Agreement II - Broad Form Money and Securities - inside	$ 2,500	$100
	Agreement III - Broad Form Money and Securities - outside	$ 2,500	
	Agreement IV - Medical Payments	each $ 500 person	NONE
	Agreement V - Depositors Forgery	$ 2,500	

[illegible]rse side for Lender's [illegible]able Endorsement 1/19/98 IA

Countersigned Allan Mendoza
Authorized Representative

151

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

Named Insured:	ABELARDO & CLAUDIA SANTANA AND ARTURO SANTANA		
DBA:	SANTANAS MEXICAN GRILL		
Mailing Address:	411 BROADWAY EL CAJON, CA 92021	Agent 95-51-0376	Policy N 60216
Location:	411 BROADWAY EL CAJON, CA 92021 (Same as above unless otherwise stated here)		
Effective Date:	12/18/97	Limit of Liability:	$1,000,000 each occ

Additional Insured Endorsement

(Special Sentinel)

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

1. The insurance provided by this policy for bodily injury liability and property damage liability under Co D- Business Liability Insurance shall also apply to the additional insured named below, but only with resp to an occurrence arising out of the ownership, maintenance or use of that part of the insured location occupied by you.

2. This insurance does not apply to:
   (a) Any occurrence which takes place after you cease to occupy the insured location.
   (b) Any structure alterations, new construction or demolition operations performed by or for any addition insured named below.

3. The additional insured shall not be construed or deemed to be a subscriber to the Company issuing this

4. The additional insured shall not be or become liable for any premium payments due upon this policy.

5. If this policy is terminated for any reason we shall give 30 days notice in writing to the additional insured below.

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

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

Countersigned Allan Meade
Authorized Representative

EXHIBIT 14 PAGE 3 OF 3

ROLLED TACOS

5 Rolled Tacos w/ Guacamole	3.70
5 Rolled Tacos w/ Sour Cream	3.70
Super Rolled Tacos	4.15

TORTAS

Carne Asada	3.85
Carnitas	3.85
Beef	3.85
Grilled Chicken	3.85
Al Pastor	3.85
Ham	3.50

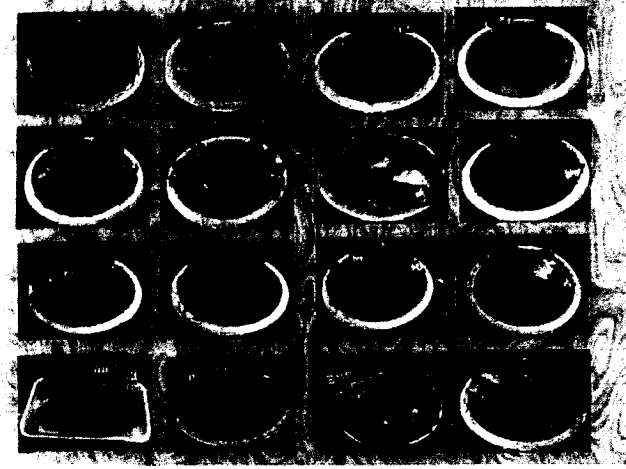
[illegible]

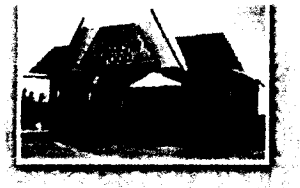
Coke - Diet Coke - Sprite - Root Beer - Dr Pepper
Raspberry Tea - Mr Ribb
Jamaica - [illegible] - Horchata - Piña

MED	LARGE	Milk
1.30	1.90	0.85

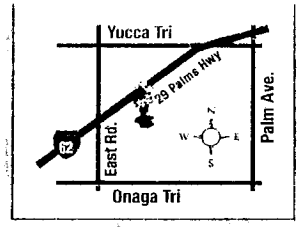
[illegible]

Friday - [illegible] & Sunday
[illegible]

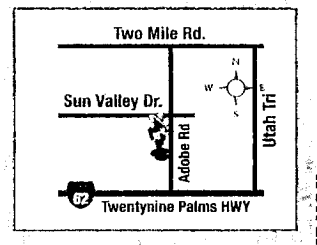




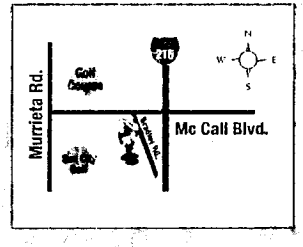
56547 29 Palms Hwy
Yucca Valley, CA 92284
Tel: (760) 228-3044
Fax: (760) 369-6596



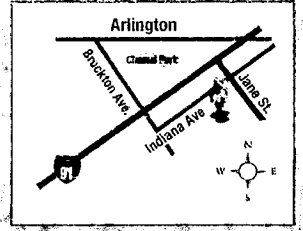
73680 Sun Valley Dr.,
Twentynine Palms, CA 92277
Tel: (760) 361-0202



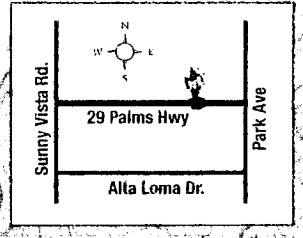
28005 Bradley Rd.
Sun City, CA 92301
Tel: (951) 679-6416
Fax: (951) 679-1638



6751 Indiana Ave.
Riverside, CA 92506
Tel: (951) 786-0996



61761 29 Palms Hwy
Joshua Tree, CA 92252
760.366.8263



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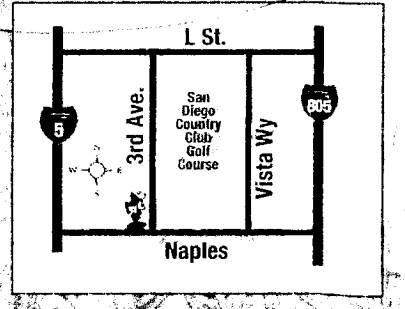
UNDER NEW MANAGEMENT
COME TRY OUR COMPLETE NEW MENU SELECTIONS

ATM ACCEPTED

1090 3rd Ave, Ste #19 Chula Vista, CA 91911
(619) 498-1042



PHONE ORDERS WELCOME

We use 100% Vegetable Oil

[illegible] PLATES

INCLUDES RICE & BEANS

1. Tostada & [illegible]	5.60
2. Two [illegible]	5.60
3. Two [illegible]	5.60
4. Tos[illegible]	5.60
5. Beef [illegible]	5.60
6. Beef [illegible]	5.60
7. Two Beef [illegible]	5.60
8. Two Tacos	5.85
(Carne Asada, [illegible] Chicken, Carnitas or Al Pastor)	
9. Two Chicken [illegible]	5.60
10. A. [illegible] Plate	5.85
C. [illegible] (Includes 2 Corn Tortillas)	
11. Two [illegible]	5.60
12. Two [illegible]	5.60
13. Steak [illegible]	5.85
14. Beef Taco & [illegible]	5.60
15. Cheese [illegible] Taco	5.60
16. Chicken [illegible] Relleno	5.60
17. Chile Relleno [illegible]	5.60
18. Chile [illegible]	5.60
19 Quesa[illegible]	5.60
20. Chimichanga	5.60
21. 4 Rolled [illegible]	5.10
22. Shrimp [illegible]	6.60
23. [illegible]	6.60
24. [illegible] Rice & Beans)	5.60
Carne Asada, [illegible]	

[illegible]

Mach[illegible]	3.25
Eggs w/ [illegible]	3.25
Ham & [illegible]	3.25
Ham [illegible]	3.25
[illegible]	
[illegible]	
& [illegible]	3.50
[illegible]	
[illegible] Cheese	3.50

BREAKFAST PLATES

Includes Rice, Beans, and a Free Coffee
Served From 6-11 AM

1. Ham & Scrambled Eggs	4.99
2. Egg, Salsa & Cheese	4.99
3. Spanish Omellete	4.99
4. Huevos Rancheros	4.99
5. Chorizo	5.50
6. Machaca	5.50

TACOS

Beef, Fish or Chicken Tacos	1.95
Carne Asada, Grilled Chicken Carnitas or Al Pastor	2.20
3 Rolled Tacos w/ Cheese	2.00
3 Rolled Tacos w/ Guacamole	2.50
3 Chicken Flautas w/ Guacamole	2.50
3 Chicken Flautas NO Guacamole	2.00
Taco de Cabeza	2.20

TOSTADAS

Bean	1.95
Supreme	3.99
Grande	4.99
Chicken or Beef	2.99
Flying Saucer	4.00

[illegible]

California Jack or Cheddar	2.50
Mushroom Chicken [illegible] Jack Cheese	5.50
Tecate Grilled Chicken or Carne Asada w/ Jack [illegible] Sour Cream, Guacamole	5.50
Shrimp Quesadilla	7.00

BURRITOS

1 lb California Burrito w/ Potatoes, Cheddar Mexican Salsa, Carne Asada or Grilled Chicken	3.85
Carne Asada, Grilled Chicken or Al Pastor	3.85
Chile Relleno	3.85
Chile Verde Burrito	3.85
Beef, Chicken or Mixed	3.70
Vegetarian w/ Beans, Rice & Pico	3.20
Beans & Cheese	2.50
Shrimp Burrito	4.25
Fish Burrito	3.25
Burrito de Cabeza	3.85

SIDE ORDERS

1/2 PT. Rice or Beans	1.75
1/2 PT. Guacamole or Sour Cream	2.00
Chips w/ Guacamole	3.25
Super Nachos w/ Beans, Cheese Sour Cream and Guacamole	4.00
Carne Asada Fries	6.00
1/2 Order of Carne Asada Fries	4.50
Carne Asada Nachos	6.00
1/2 Order of Carne Asada Nachos	4.50
Chimichanga	4.75
Nachos w/ Salsa	2.50
Side Carne	2.10

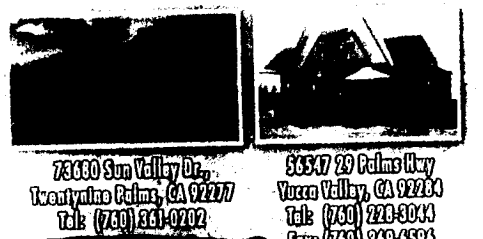
[illegible]

Cheese, Chicken or [illegible]	3.69

[illegible] 75¢

Sour Cream • Cheese • Guacamole • Pico de Gallo

PRICES ARE SUBJECT TO CHANGE WITHOUT NOTICE



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Twentynine Palms, CA 92277
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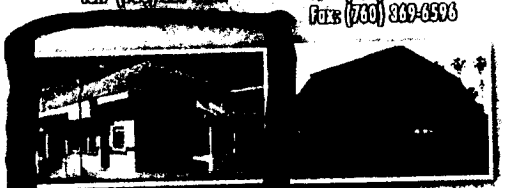
Yucca Valley, CA 92284
Tel: (760) 228-3044
Fax: (760) 369-6596



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Sun City, CA 92301
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6751 Indiana Ave
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IT'S MUY BUENO

We use 100% Vegetable Oil

PHONE ORDERS WELCOME

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760.366.8263

ATM CARDS ACCEPTED

Prices Subject to change without notice

COMBINATION PLATES

INCLUDES RICE & BEANS

1. Tostada & Beef Taco	5.60
2. Two Beef Tacos	5.60
3. Two Cheese Enchiladas	5.60
4. Tostada & Enchilada	5.60
5. Beef Taco & Enchilada	5.60
6. Beef Burrito & Enchilada	5.60
7. Two Beef Burritos	5.60
8. Two Tacos	5.85
(Carne Asada, Grilled Chicken, Carnitas or Al Pastor)	
9. Two Chicken Tacos	5.60
10. A. Carne Asada Plate B. Carnitas Plate	5.85
C. Adobada Plate (Includes 3 Corn Tortillas)	
11. Two Fish Tacos	5.60
12. Two Chiles Rellenos	5.60
13. Steak Ranchero	5.85
14. Beef Taco & 3 Rolled Tacos	5.60
15. Cheese Enchilada & 1 Fish Taco	5.60
16. Chicken Burrito & Chile Relleno	5.60
17. Chile Relleno & Enchilada	5.60
18. Chile Relleno & Beef Taco	5.60
19. Quesadilla & Beef Taco	5.60
20. Chimichanga	5.10
21. 4 Rolled Taquitos w/Guacamole	6.60
22. Shrimp Fajitas	6.60
23. Camarones Empanizados	5.60
24. California Combination (w/ Rice & Beans)	
Carne Asada, Grilled Chicken or Carnitas	

BREAKFAST PLATES

Includes Rice, Beans, and a Free Coffee
Served From 6-11AM

1. Ham & Scrambled Eggs	4.99
2. Egg, Salsa & Cheese	4.99
3. Spanish Omellete	4.99
4. Huevos Rancheros	4.99
5. Chorizo	5.50
6. Machaca	5.50

BREAKFAST BURRITOS

Machaca or Chorizo	3.25
Eggs w/ Mexican Salsa & Cheese	3.25
Ham & Eggs	3.25
Ham & Potatoes	3.25
Breakfast California 2 Eggs, Bacon Potatoes, Mexican Salsa, Beans & Cheddar Cheese	3.50
Ranchero Burrito 2 Eggs, Chorizo Potatoes, Mexican Salsa, Beans & Cheese	3.50

TACOS

Beef, Fish or Chicken Tacos	1.95
Carne Asada, Grilled Chicken Carnitas or Al Pastor	2.20
3 Rolled Tacos w/ Cheese	2.00
3 Rolled Tacos w/ Guacamole	2.50
3 Chicken Flautas w/ Guacamole	2.50
3 Chicken Flautas NO Guacamole	2.00

Respondent's Exhibit No. 4
Case No. 92043152
Gallego vs. Santana Grill

TOSTADAS

Bean	1.95
Supreme	3.99
Grande	4.99
Chicken or Beef	2.99
Flying Saucer	4.00

BURRITOS

1 lb California Burrito w/ Potatoes, Cheddar Mexican Salsa, Carne Asada or Grilled Chicken	3.85
Carne Asada, Grilled Chicken or Al Pastor	3.85
Chile Relleno	3.85
Chile Verde Burrito	3.85
Beef, Chicken or Mixed	3.70
Vegetarian w/ Beans, Rice & Pico	3.20
Beans & Cheese	2.50
Shrimp Burrito	4.25
Fish Burrito	3.25

[illegible] .75¢

Sour Cream • Cheese • Guacamole • Pico de Gallo

QUESADILLAS

California Jack or Cheddar	2.50
Mushroom Chicken Quesadilla and Jack Cheese	5.50
Tocate Grilled Chicken, or Carne Asada, w/ Jack Cheese Sour Cream, Guacamole	5.50

SIDE ORDERS

1/2 PT. Rice or Beans	1.75
1/2 PT. Guacamole or Sour Cream	2.00
Chips w/ Guacamole	3.25
Super Nachos w/Beans, Cheese Sour Cream and Guacamole	4.00
Carne Asada Fries	6.00
1/2 Order of Carne Asada Fries	4.50
Carne Asada Nachos	6.00
1/2 Order of Carne Asada Nachos	4.50
Chimichanga	4.75
Nachos w/ Salsa	2.50
Side Carne	2.10

ENCHILADAS

Cheese, Chicken or Beef	3.69

TORTAS

Carne Asada	3.85
Carnitas	3.85
Beef	3.85
Grilled Chicken	3.85
Al Pastor	3.85
Ham	3.50

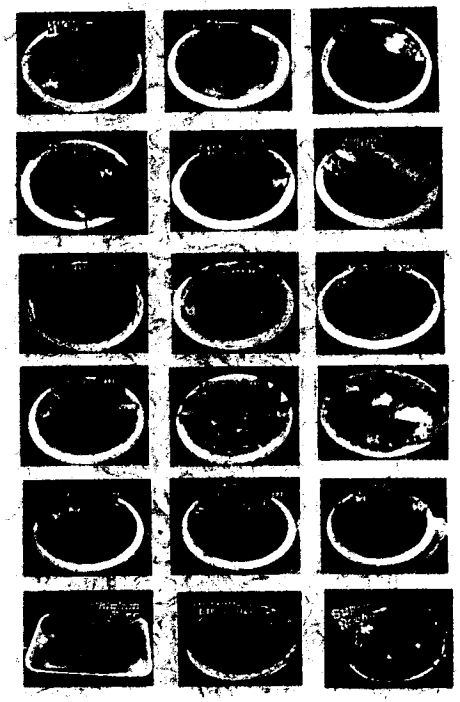
DRINKS SODAS

Coke - Diet Coke - Sprite - Root Beer - Dr Pepper
Raspberry Tea - Mr Pibb
Jamaica - Tamarindo - Horchata - Piña

MED	LARGE	Milk
1.30	1.90	0.85

[illegible]

Friday - Saturday & Sunday
$4.50 All Day
Most ATM Cards Accepted



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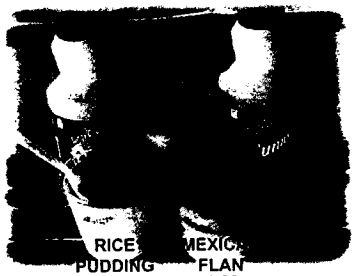
BEVERAGES

FRESH LEMONADE * HORCHATA * JAMAICA
TAMARINDO * NESTEA * MILK * ORANGE JUICES
MED.....1.20 LG.....1.90

PEPSI * DIET COKE * SPRITE * DR. PEPPER
ROOT BEER * ORANGE
MED.....1.20 LG.....1.90

BOTTLED WATER
1.20

DESSERTS



RICE PUDDING 1.20

MEXICAN FLAN 1.20

MENUDO

FRI-SAT-SUN 4.50

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...ES MUY BUENO

OURS LOCATIONS

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WELCOME PHONE ORDERS

SANTANA MEXICAN GRILL

...ES MUY BUENO

WELCOME PHONE ORDERS

QUALITY, THE KEY TO OUR SUCCESS

Respondent's Exhibit No. 5
Case No. 92043152
Gallego vs. Santana Grill

COMBINATION PLATES

1-CARNE ASADA OR CARNITAS.....6.10
(INCLUDES 3 CORN OR 2 FLOUR TORTILLAS)
2-TWO CARNE ASADA TACOS.....6.10
3-TWO CHILE RELLENOS.....6.10
4-TOSTADA & BEEF TACO.....5.30
5-TWO BEEF TACOS.....5.30
6-TWO CHICKEN TACO.....5.30
7-TWO FISH TACOS.....5.30
8-TOSTADA & ENCHILADA.....5.30
9-BEEF TACO & ENCHILADA.....5.30
10-CHILE RELLENO & ENCHILADA.....5.30
11-TWO CHEESE ENCHILADAS.....5.00

CHOOSE ANY ITEM FROM OUR REGULAR MENU & FOR ONLY 1.65
EXTRA, WILL GIVE YOU A PLATE WITH RICE & BEANS

QUESADILLAS

QUESO MUSH CHICKEN OR CARNE ASADA.....5.10
(WITH JACK CHEESE, MUSHROOMS)
CALIFORNIA JACKCHEDDAR.....2.50

TECATE CHICKEN OR CARNE ASADA
5.10

ENCHILADAS

(WITH CHEDDAR & LETTERS)
CHICKEN * CHEESE * BEEF
3.80

PLUS TAX

TOSTADAS

(WITH BEANS, SOUR CREAM, CHEESE & LETTUCE)
BEEF * BEANS * CHICKEN * CARNITAS.....2.50
FLYING SAUCER CHICKEN OR BEEF.....3.10

SIDES

1/2 PT. BEANS OR RICES.....1.50
1/2 PT. SALSA OR SOUR CREAM.....1.75
1/2 PT. GUACAMOLE.....2.20
2 CORN OR 1 FLOUR TORTILLAS..... .75

BIG TACOS

CARNE ASADA * CARNITAS.....2.50
BEEF * FISH * CHICKEN.....2.20
4 BEEF ROLLED TACOS WITH CHEESE..2.10 GUACAMOLE.....2.75
CHICKEN FLAUTAS WITH CHEESE.....2.10 GUACAMOLE.....2.75
TIJUANA TACOS ONE.....1.20 THREE.....3.40 SIX.....6.10

TORTAS

(WITH LETTUCE & GUACAMOLE)
CARNE ASADA * HAM & CHEESE * CHICKEN * BEEF * CARNITAS
3.50

EXTRAS

(ONLY INSIDE YOUR ORDERS)
RICE * BEANS * SOUR CREAM * CHEESEMEXICAN SALSA * LETTUCE
.60
CHICKE * CARNE ASADA * CARNITAS * FISH
1.50
GUACAMOLE..... .70

BURRITOS

CARNE ASADA * CARNITAS * GRILL CHICKEN.....3.80
(WITH SALSA & GUACAMOLE)
FISH (CABBAGE, WHITE SAUCE & SALSA).....3.50
1 LB. GREEN PORK (WITH RICE & BEANS INSIDE).....3.80
BEANS.....2.10
ACHIOTE CHICKEN.....3.25
SHRIMP(WITH RICE & BEANS).....4.25
CHIMICHANGA CHICKEN OR BEEF.....4.25
CHILE RELLENO RICE & BEANS.....3.80

CALIFORNIA BURRITO
(CARNE ASADA OR CHICKEN)
3.80

PLUS TAX

DAILY SPECIAL

1- ENCHILADAS COMBINATION PLATE.....4.50
(ONE CHICKEN OR CHEESE WITH RICE, BEANS & CHIPS)
2- CARNE ASADA TOSTADA.....3.50
(WITH BEANS SOUR CREAM,CHEESE, LETTUCE, MEXICAN SALSA & FREE SODA)
3-CHICKEN BURRITO FIILED.....3.80
(WITH RICE, BEANS & SOUR CREAM)
4-BUY TWO FISH TACOS GET THE 3RD ONE FREE.....4.50
5- 4 BEEF ROLLED TACOS OR CHICKEN FLAUTAS.....4.80
WITH RICE, BEANS, CHIPS & CHOICE OF ANY 4 ITEMS: CHEESE * LETTUCE
SOUR CREAM * MEXICA SALSA * GUACAMOLE
6- 1LB. VEGGE BURRITO.....3.50
(WITH YOUR CHOICE OF ANY 4 ITEMS: BEANS * RICE * CHEESE * LETTUCE
CABBAGE * MIXICAN SALSA * POTATOES * SOUR CREAM)

CHIPS OR FRIES WITH CHEESE, GUACAMOLE
SALSA AND CREAM
CARNE ASADA OR CHICKEN
5.50
1/2 OREDER...3.75

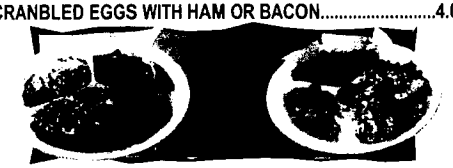
CHIPS

PLAIN
1.20
WITH CHEESE OR SALSA
1.90
WIHT CHEESE IN GUACAMOLE
3.70

BREAKFAST

(INCLUDES RICE & BEANS)

MACHACA OR CHORIZO PLATE.....4.50
HUEVOS RANCHEROS.....4.00
EGGS SALSA & CHEESE.....4.00
SCRANBLED EGGS WITH HAM OR BACON.....4.00



TORTAS

MACHACA * CHORIZO * EGGS SALSA & CHEESE
3.50

BUENOS DIAS BURRITO
3.25

BREAKFAST BURRITO

MACHACA OR CHORIZO BURRITO...3.25
RANCHO BURRITO.....3.25
(2 EGGS, CHORIZO, POTATOES & SALSA)

PLUS TAX

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