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(Exceeds 300 pages)

Proceeding/Serial No: 92043152

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Title: Petitioner's Trial Brief

Part 2 of 3



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Trial Deposition

Arturo Castaneda

(Cited as “Castaneda”)

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

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

DEPOSITION OF ARTURO CASTANEDA

JANUARY 31, 2008



ABRAMS, MAH & KAHN
REPORTING SERVICE

Reported By: Lexann Christy
CSR No. 7932

File No.: 25634

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Arturo Castaneda

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
3
4

5 ARTURO SANTANA GALLEGO,)
6)

7 Petitioner,)

8 vs.)

9 SANTANA'S GRILL, INC.,)
10)

11 Registrant.)
12)

13 Cancellation Nos. 92043152
14 (Consolidated) 92043160
15 92043175

16 Deposition of ARTURO CASTANEDA, taken on behalf of
17 Petitioner, at Bremer Whyte Brown & O'Meara LLP,
18 550 West C Street, Suite 1450, San Diego, California,
19 commencing at 10:43 a.m., on Thursday, January 31, 2008,
20 before Lexann Christy, CSR No. 7932.
21
22
23
24
25

Arturo Castaneda

1 APPEARANCES OF COUNSEL:

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20 Also Present:

21 Silvia San Martin, Certified Interpreter
22 Abelardo Santana
23
24
25

Arturo Castaneda

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ARTURO CASTANEDA	4	28		

E X H I B I T S

PETITIONER'S EXHIBIT	DESCRIPTION	PAGE
10	Colored Photographs, 14 pages	12
11	Santana's Mexican Food... Es Muy Bueno Menu, 1 page	23
12	Santana's Mexican Food Menu, 1 page	24
13	Color Xeroxed Photographs, 8 pages	25
RESPONDENT'S EXHIBIT		
8	Santana's Mexican Grill Internet Printout, 3 pages	52

INSTRUCTIONS NOT TO ANSWER

PAGE	LINE
55	6

Arturo Castaneda

1 SAN DIEGO, CALIFORNIA, THURSDAY, JANUARY 31, 2008

2 10:43 a.m. - 1:27 p.m.

3
4 SILVIA SAN MARTIN,

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

9
10 ARTURO CASTANEDA,

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

14
15 DIRECT EXAMINATION

16 BY MS. ARMENTA:

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

19 A Arturo Castaneda.

20 Q Good morning, Mr. Castaneda.

21 A Good morning.

22 Q Of the Santana family, who did you meet first?

23 A First I met -- well, everybody, Abelardo, Pedro.

24 Q How did you come to meet them?

25 A I used to work at a restaurant called Alberto's,

Arturo Castaneda

1 and they asked me to help them to -- they asked me to help
2 them at the time when it is the busiest, so I would go
3 there and I would help them out for three or four hours.

4 Q What kind of help did you give them?

5 A As a cook.

6 Q Over how long a period of time did you help out
7 as a cook?

8 A The first time that I was not working with them I
9 would just go there in order to help them. That was about
10 three months.

11 Q Can you tell us approximately what year that was?

12 A That was in 1990.

13 Q By then -- which restaurant location was that?

14 A Rosecrans.

15 Q At that point by then was the restaurant name
16 "Santana's Mexican Food"?

17 A Yes.

18 Q And who owned it at that time?

19 A I don't remember who the owner was.

20 Q That's okay. As we ask you questions, it's very
21 important to remember that an "I don't know" answer is
22 perfectly fine.

23 Did you subsequently become an employee of
24 Santana's Mexican Food?

25 A Like one year later I was offered a job as a

Arturo Castaneda

1 manager, evening manager, from 6:00 to 2:00 a.m.

2 Q Who was it that offered you that position?

3 A Abelardo did.

4 Q How long did you occupy that position, if you can
5 remember, approximately?

6 A Three months.

7 Q Why did you leave that position?

8 A Because we did not get along in the sense my way
9 of doing the work. Abelardo did not like the way that I
10 worked, and then I decided to just give it up.

11 Q What did you do after that?

12 A Oh, I worked at Alberto's again.

13 Q When was the next time that you worked for or had
14 any business relationship with Santana's Mexican Food?

15 MR. SANDSTRUM: Objection. Vague and ambiguous.

16 THE WITNESS: He offered me again work in '95 or so.
17 I don't remember.

18 BY MS. ARMENTA:

19 Q Was that Abelardo when you say "he"?

20 A Abelardo, yes. And then I work as an employee
21 and I was not interested in manager.

22 Q What did you do after that?

23 A Well, I gave it up again because I did not get
24 along with one of his managers.

25 Q Then what did you do after that?

Arturo Castaneda

1 A I give it up and I continue working at another
2 restaurant.

3 Q After that period, when was the next time that
4 you had any business relationship with Santana's Mexican
5 Food?

6 MR. SANDSTRUM: Vague and ambiguous.

7 THE WITNESS: I worked again with him, I believe, like
8 four months later. I don't remember.

9 BY MS. ARMENTA:

10 Q When you say "for him," do you mean for Abelardo?

11 A Yes.

12 Q And then after those approximate four months,
13 then what did you do?

14 A What do you mean?

15 Q Did you quit?

16 A I quit because of family affairs. A
17 brother-in-law was ill, he got cancer, so...

18 Q What year was that?

19 A Gee, '95.

20 Q And then after that when was the next time that
21 you had any kind of business relationship with Santana's
22 Mexican Food?

23 MR. SANDSTRUM: Vague and ambiguous, leading.

24 THE WITNESS: Well, they offer me again work in Yucca
25 Valley.

Arturo Castaneda

1 BY MS. ARMENTA:

2 Q Who offered you that work?

3 A Mr. Arturo Santana with the option for purchase
4 if I was to go to Yucca Valley.

5 Q Where were you living before that?

6 A San Diego.

7 Q Did you go work at Yucca Valley at that point?

8 A Well, that was a deal that we made because he
9 wanted to sell the place without knowing me, and I said
10 that I would not accept because of problems that I had had
11 with one of his sons. At first I wanted him to train me as
12 a worker and for him to know who I was in case he wanted to
13 give me the restaurant and do the deal.

14 Q Is that what you then did?

15 A We said for four months. Three months later he
16 went there and he sold it to me.

17 Q When you say he sold it to you, do you mean the
18 Yucca Valley restaurant?

19 A The restaurant and the piece of land and also a
20 van that was also included in the deal, a big van or a
21 truck, hard to tell, a truck.

22 MS. ARMENTA: Could you read back the last answer,
23 please.

24 (The record was read.)

25 BY MS. ARMENTA:

Arturo Castaneda

1 Q When Mr. Santana sold it to you, did you have any
2 attorneys assist you in the negotiation of that sale?

3 A A real estate broker.

4 Q So you had a real estate broker?

5 A Uh-huh.

6 Q What about an attorney? Were there any attorneys
7 involved?

8 A No.

9 Q Do you remember the name of the real estate
10 broker?

11 A I don't recall.

12 Q At the time that Mr. Santana sold it to you, what
13 was the name that was on the restaurant?

14 MR. SANDSTRUM: Objection. Vague and ambiguous.
15 There's a lot of "Santana's," just to make sure we're
16 clear.

17 THE WITNESS: Santana's Mexican Food.

18 BY MS. ARMENTA:

19 Q When you say Mr. Santana sold it to you -- you
20 call him "Don Arturo," and that's Mr. Arturo Santana
21 Gallego; is that correct?

22 A Yes.

23 Q So I'll call him Don Arturo.

24 Now, when Don Arturo sold you the restaurant in
25 Yucca Valley, what was the name on the restaurant?

Arturo Castaneda

1 A Santana's Mexican Food...Es Muy Bueno. "It's
2 very good," that's the way it says, "Santana's Mexican
3 Food...It's Very Good."

4 MS. ARMENTA: The interpreter might not be aware, but
5 the term "Es Muy Bueno" is a phrase that is at issue in the
6 litigation, so when the witness says "Es Muy Bueno" in
7 Spanish, if you could repeat that in Spanish, as opposed to
8 translating that.

9 THE INTERPRETER: I understand. I was not aware of
10 that.

11 MS. ARMENTA: Can you read back the last answer,
12 please.

13 (The record was read.)

14 BY MS. ARMENTA:

15 Q What kind of business was Santana's Mexican Food
16 at the time that Don Arturo sold it to you?

17 A Mexican food.

18 Q What kinds of items were offered for sale to the
19 public?

20 A Tacos, burritos, enchiladas, tortas, everything,
21 all types of Mexican food.

22 Q Was the California Burrito on the menu at the
23 time you purchased the restaurant?

24 A Yes, yes.

25 Q At the time that you purchased the restaurant,

Arturo Castaneda

1 did you use Don Arturo's recipe for the California Burrito?

2 A Yes.

3 Q To this day at each of the restaurants that you
4 own do you use Don Arturo's recipe for the California
5 Burrito?

6 A Yes.

7 Q Let's talk about the terms of the sale of the
8 restaurant.

9 You mentioned the business that is the
10 restaurant, the property and a truck.

11 Did you also receive the items that were located
12 inside the restaurant, like stove, the pots and pans, and
13 all the other things associated with running a restaurant?

14 A Yes.

15 Q Did you receive in connection with the purchase
16 of that restaurant any menus from Don Arturo?

17 A Yes, the menu already existed there. It was
18 already there.

19 Q When you purchased the restaurant, did you
20 continue to use the same menu that Don Arturo had used?

21 A Yes.

22 Q To this day are there any similarities between
23 the menu that Don Arturo gave you when he sold you the
24 restaurant and the menu you use in all of your restaurants
25 today?

Arturo Castaneda

1 MR. SANDSTRUM: I'll just object as vague and
2 ambiguous, if we're talking about the menu items or the
3 menu appearance.

4 MS. ARMENTA: I'll ask him about both.

5 Q I'm asking you about the menu items.

6 A The main menu, I still have it. I added a few
7 other foods.

8 Q What other foods have you added generally?

9 A Well, I worked at Alberto's, and I copied from
10 there -- I copied meals that were doing very well at other
11 restaurants and some dishes that I made up myself.

12 Q Over how long of a period have you developed
13 these additions to the principal menu that you acquired
14 from Don Arturo?

15 A Ever since I got the restaurants.

16 MS. ARMENTA: I'm going to mark as a collective
17 exhibit Petitioner's Exhibit 10.

18 (Exhibit P-10 was marked for identification.)

19 BY MS. ARMENTA:

20 Q Mr. Castaneda, I'm going to hand you a series of
21 photographs, and I'd just like you to tell me what these
22 are photographs of.

23 A Yucca Valley.

24 Q When you say "Yucca Valley," do you mean the
25 restaurant name "Santana's Mexican Food"?

Arturo Castaneda

1 A Uh-huh.

2 Q Is that a "yes"?

3 A Yes.

4 Q And that's the restaurant that you purchased from
5 Don Arturo?

6 A Uh-huh, yes.

7 MR. SANDSTRUM: Can I interrupt real quick? I don't
8 know if we mentioned how many pages are in Exhibit 10.

9 MS. ARMENTA: If you'd like me to count them, I can.

10 MR. SANDSTRUM: Just so we know how many exist under
11 that exhibit.

12 MS. ARMENTA: Sure, I can do that. Petitioner's 10
13 exists of 26 photographs, 14 pages, Bates-labeled PL -415,
14 -416, -431, -432, -429, -430, -427, -428, -425, -426, -423,
15 -424, -421, -422, -419, -420, -417, -418, -433, -434, -437,
16 -438, -435, -436, -439 and -440.

17 Q Mr. Castaneda, when you say that the principal
18 menu that Don Arturo sold you remains with your restaurant
19 today, is that the menu that's depicted on, for instance,
20 the drive-thru photographs on -421, -422, -423 and -424?

21 MR. SANDSTRUM: I'm going to object. That misstates
22 his testimony.

23 BY MS. ARMENTA:

24 Q You can answer.

25 A It's El Cajon. The rest has been modified

Arturo Castaneda

1 because those pictures were taken by the time I remodeled
2 the restaurant.

3 Q What about the menu items, are the menu items
4 similar as to the time Don Arturo sold you the restaurant?

5 MR. SANDSTRUM: Asked and answered.

6 THE WITNESS: It's similar, it's just the small one,
7 the little one.

8 BY MS. ARMENTA:

9 Q I'm not talking about the look of the menu, but
10 the items that are offered for sale, are those similar to
11 the ones that were offered when Don Arturo owned the
12 restaurant?

13 A Yes.

14 MR. SANDSTRUM: Lacks foundation, and I think it's
15 vague and ambiguous as to what menu items we're talking
16 about.

17 THE WITNESS: Yes.

18 BY MS. ARMENTA:

19 Q Have you had a chance to look for the written
20 agreement for purchase and sale of the restaurant?

21 A Yes. It's got to be there.

22 Q Have you yet located it?

23 A It must be there. I have not looked for it, but
24 my bookkeeper has them all, all of the agreements.

25 Q Did anyone ever ask in this case, to your

Arturo Castaneda

1 knowledge, for you to come and give testimony like this?

2 A No.

3 Q Have you ever received a subpoena that was served
4 on you or that anyone gave you for you to give them the
5 Purchase and Sale Agreement?

6 A No.

7 Q In any event, are you willing to look for it for
8 us now?

9 A Yes.

10 Q Now, tell me what you remember about the terms of
11 the sale. We've talked about the things that you got, the
12 business, the property, the truck and the things associated
13 with the restaurant business that were located inside the
14 restaurant.

15 A Well, it was the purchase and sale of everything
16 and everything that was there, payments beginning with
17 number one until the agreement was closed.

18 Q What was your understanding of what rights, if
19 any, you acquired to use the name "Santana's Mexican Food"?

20 A Well, the rights were that I could use the name.
21 If I wanted to open up another restaurant, I could use the
22 name.

23 Q Have you opened other restaurants?

24 A Yes.

25 Q How many restaurants in total do you own today

Arturo Castaneda

1 that have the name "Santana's Mexican Food"?

2 A Eight.

3 Q And do you use the slogan "Es Muy Bueno" in
4 association with the name on each of those eight
5 restaurants?

6 A No.

7 Q Which ones do you use that on, if you can
8 remember?

9 A In Yucca Valley -- in Chula Vista, sorry, the
10 name is not "Mexican Food."

11 Q I'm only talking about the restaurants that are
12 called "Santana's Mexican Food," not any other restaurants
13 that you might own.

14 A Yes.

15 Q So do you use "Santana's Mexican Food" with the
16 slogan "Es Muy Bueno," either on the menus or the signs or
17 anywhere else?

18 A In some, not all of them.

19 Q Do you use the words "Santana's Mexican Food...Es
20 Muy Bueno" on the sign at the Yucca Valley restaurant?

21 A Yes.

22 Q Did that phrase, "Es Muy Bueno," exist on the
23 exterior Santana's Mexican Food sign at the time that you
24 purchased the business from Don Arturo?

25 A Yes.

Arturo Castaneda

1 Q What was the purchase price that you agreed on
2 with Don Arturo for Yucca Valley?

3 A \$1,080,000.

4 Q Has that been paid in full?

5 A No.

6 Q Mr. Don Arturo testified this morning that he
7 receives monthly payments of \$3,000 or approximately \$3,000
8 a month. Is that accurate?

9 A Yes.

10 Q And you've paid him those monies since the time
11 they became due under the purchase and sale contract?

12 A Yes.

13 Q Do you still have payments yet to make?

14 A Yes.

15 Q Have you talked to Don Arturo about what rights
16 you have to use the name "Santana's Mexican Food"?

17 A Yes.

18 Q From those conversations do you feel that you
19 have reached an agreement with Don Arturo about what your
20 rights are?

21 MR. SANDSTRUM: I'm going to object as irrelevant as
22 to what he feels.

23 BY MS. ARMENTA:

24 Q What is your understanding what rights you have
25 to use the name "Santana's Mexican Food" in association

Arturo Castaneda

1 with restaurants in the United States?

2 A That relationship is to use the name, to let him
3 know I'm going to be opening up another restaurant. I
4 always ask for his opinion before, before opening up a
5 restaurant. If he is in agreement, it is opened, and if he
6 is not, it's not opened, and is opened with the conditions
7 that he imposes.

8 Q What kind of conditions are those?

9 A Like not to get here in San Diego near his sons.
10 I did set one up here in Chula Vista. He allowed me to
11 open it, but not under the name "Santana's."

12 Q Does he come to your restaurants with any amount
13 of frequency?

14 A Yes.

15 MR. SANDSTRUM: Vague and ambiguous, lacks foundation.
16 It's overbroad as to what restaurants.

17 BY MS. ARMENTA:

18 Q What is your understanding of the reason that
19 Mr. Don Arturo visits any of your restaurants with the name
20 "Santana's Mexican Food"?

21 MR. SANDSTRUM: Objection. Calls for speculation.

22 BY MS. ARMENTA:

23 Q You can answer.

24 A Well, it's something I've always told him, that
25 these places are also his. If he sees something that is

Arturo Castaneda

1 wrong, he can let me know, and the relation, well, he comes
2 over, and we talk about it. It is not specifically about
3 how the restaurant is doing. We talk.

4 Q Mr. Don Arturo testified earlier that he believed
5 that if you did something wrong in connection with the
6 restaurants, that he had the right to ask you to fix that.

7 Do you agree with that?

8 A Yes.

9 Q And do you agree that Don Arturo has the right to
10 block you from opening a restaurant in a particular
11 location?

12 A Yes.

13 Q Has he, in fact, blocked you from opening a
14 restaurant with the name "Santana's Mexican Food" on it in
15 San Diego County?

16 A Yes. Well, he hasn't blocked any of them because
17 I haven't gotten it here, I haven't gotten them here in
18 San Diego. In Chula Vista, that's very far from where they
19 are, but it has always been the case ever since I began the
20 deal with him, you know, not to get close to any of his
21 sons, and I wouldn't do it either.

22 Q And has that been your understanding since the
23 time that you purchased the Yucca Valley restaurant from
24 Don Arturo?

25 A Yes.

Arturo Castaneda

1 Q Have you always conducted yourself in accordance
2 with that agreement?

3 A Very much so with respect to Arturo. He has
4 always told, he has always -- if I have a project in mind,
5 I always take him into account.

6 Q How frequently do you speak with Don Arturo?

7 A All the time. Once, twice a month.

8 Q And when you speak, is it for social reasons, or
9 does it have something to do with the business?

10 A Social business, social business.

11 Q How frequently does Mr. Santana Gallego, if you
12 know -- strike that.

13 When you purchased the business from Don Arturo,
14 did you continue to use at least for a short period of time
15 the same vendors that Don Arturo had been using?

16 A Yes.

17 Q Were there any vendors that you continued to use
18 for five years or more after your purchase of the
19 restaurant?

20 A Yes.

21 Q Were there any vendors that you used for 10 years
22 or more after you purchased the restaurant?

23 A I have different ones, no, they're not the same.

24 Q I know you have different ones now. But were
25 there any that you used for a long period of time for

Arturo Castaneda

1 years?

2 A Yes.

3 Q Which vendors did you use for the longest after
4 you purchased the restaurant?

5 A Company of the Tortillas.

6 Q The Company of the Tortillas?

7 A Company of the Tortillas. Gustavo Gonzalez is
8 the company.

9 Q And Gustavo Gonzalez was the tortilla vendor that
10 Arturo was using?

11 A Yes.

12 Q And after you purchased the restaurant, did you
13 continue to use Gustavo Gonzalez as your tortilla vendor?

14 A Yes, yes.

15 Q Have you been to any of Abelardo Santana's
16 restaurants in the last five years?

17 A Yes, probably.

18 Q Are you currently aware of any similarities --
19 strike that.

20 Do your employees wear uniforms?

21 A Yes.

22 Q Do you know if they have any similarity to the
23 uniforms used in Abelardo Santana's restaurants?

24 MR. SANDSTRUM: Lacks foundation.

25 THE WITNESS: Yes, probably so.

Arturo Castaneda

1 BY MS. ARMENTA:

2 Q Do you know for sure one way or the other, or are
3 you guessing?

4 A Yes, yes, they are similar.

5 Q And are you familiar with any similarities
6 between the menus that your restaurant uses and those used
7 in Abelardo Santana's restaurants?

8 MR. SANDSTRUM: Object. Lacks foundation.

9 THE WITNESS: No.

10 BY MS. ARMENTA:

11 Q Let me have you look at Respondent's Exhibit 3.
12 Can you tell me what that is?

13 A My menus, the restaurants that I had at the time.

14 Q Are they listed on that menu?

15 A Yes.

16 Q And there's photographs of them on the menu, as
17 well?

18 A Uh-huh.

19 Q Can you tell from seeing which restaurants are
20 located on this menu approximately the date of this menu?

21 A Let's see. Two years ago.

22 Q Let me show you Respondent's Exhibit 4. What is
23 that?

24 A This is another menu from three years ago or so.

25 Q Is it fair to say that you can date the menu

Arturo Castaneda

1 based on which of the other restaurants that are depicted
2 on the menu?

3 A Yes, because every time that I opened one up, I
4 would make new menus.

5 Q And then that new location would then appear on
6 the menu as these other locations are?

7 A Uh-huh.

8 Q Is that a "yes"?

9 A Yes.

10 MR. SANDSTRUM: I can tell you the dates those were
11 taken, if you'd like to have those dates.

12 MS. ARMENTA: That's okay.

13 MR. SANDSTRUM: It wasn't that long ago.

14 MS. ARMENTA: Let's mark as Petitioner's Exhibit 11
15 this.

16 (Exhibit P-11 was marked for identification.)

17 BY MS. ARMENTA:

18 Q Could you please tell me what that is?

19 A A menu for the food that I sell and the
20 restaurants that I used to have.

21 MS. ARMENTA: "That I had then." Can you ask him
22 again? "That I had at the time."

23 Q Do you still own these restaurants that are
24 depicted on Petitioner's Exhibit 11?

25 A Yes.

Arturo Castaneda

1 THE INTERPRETER: We can go back if you want.

2 MS. ARMENTA: No, that's fine. I clarified it.

3 Q And what is Petitioner's Exhibit 12?

4 A This is another menu, the same thing, when I open
5 up another restaurant.

6 (Exhibit P-12 was marked for identification.)

7 BY MS. ARMENTA:

8 Q Do you use the same printer for the menus that
9 you use at each of the restaurants?

10 A Yes.

11 Q And do you use the basic same layout for the
12 menus that are distributed at each restaurant?

13 A Yes, uh-huh.

14 Q Do you use the same colors on the menus at each
15 of the restaurants?

16 A Sometimes that changes.

17 Q But at the same time all the menus are out --

18 A The same for all of them.

19 Q You're using the same for all of the restaurants?

20 A Uh-huh.

21 Q But from one printing to the next you might
22 change it a little bit; is that right?

23 A Yes. The prices have changed, foods, new foods
24 that have been introduced.

25 MS. ARMENTA: I'll going to mark as Petitioner's

Arturo Castaneda

1 Exhibit 13 a series of photographs that are contained on
2 eight pages and Bates-labeled sequentially PL00400 through
3 PL00414. These were attached to the Motion for Summary
4 Judgment, as well.

5 MR. SANDSTRUM: I get to see the colored version now.
6 That's nice.

7 (Exhibit P-13 was marked for identification.)

8 MR. SANDSTRUM: Do you want me to hand them to the
9 witness?

10 MS. ARMENTA: Yes, please.

11 MR. SANDSTRUM: Before you ask a question, I'm just
12 going to get a glass of water if you don't mind.

13 MS. ARMENTA: I can ask it while you get water.

14 Q Mr. Castaneda, what are those photographs of?

15 A This is another restaurant that I opened up. I
16 completely remodeled the building, parking lot.

17 Q Where is this restaurant located?

18 A 29 Palms.

19 Q Were these pictures taken before or after the
20 remodel?

21 A After, after.

22 Q Approximately what year did you remodel this
23 restaurant?

24 A 2000, I believe.

25 Q Are all your restaurants open 24 hours?

Arturo Castaneda

1 A All of them.

2 Q Do you serve menudo in any of your restaurants?

3 A All of them.

4 Q Do you serve the California Burrito at any of
5 your restaurants?

6 A All of them.

7 Q Just from expressions in the room and from some
8 questions that have been asked, I have a feeling that
9 Abelardo Santana or Attorney Sandstrum think you serve the
10 California Burrito in all of your restaurants.

11 Any reason why someone might think that, that you
12 can think of?

13 MR. SANDSTRUM: I'm just going to object. I have no
14 such belief.

15 MS. ARMENTA: Okay.

16 THE WITNESS: In all of the restaurants the burrito,
17 that burrito is served. It is part of the main menu that
18 was in existence when I purchased the restaurant.

19 BY MS. ARMENTA:

20 Q If someone opened a restaurant -- strike that.

21 If Don Arturo let someone open a restaurant that
22 had the name "Santana's Mexican Food" and it was located
23 very close to one of your existing restaurants, to whom
24 would you complain, Don Arturo or someone else?

25 A Well, Don Arturo.

Arturo Castaneda

1 Q You were sitting here during Don Arturo's
2 testimony and you heard him testify about what rights he
3 thought he had concerning the name to the restaurant or
4 concerning what rights he had to control your use of the
5 name of the restaurant.

6 We've been here a couple of days and I don't want
7 to repeat every single question that was asked of Don
8 Arturo, but was there anything that you heard about his
9 explanation about his rights that you disagree with?

10 MR. SANDSTRUM: I'm going to object. That assumes
11 facts not in evidence, it's vague and ambiguous, it's
12 leading and misstates testimony and calls for a lengthy
13 narrative.

14 Go ahead.

15 BY MS. ARMENTA:

16 Q Anything you disagree with?

17 A No.

18 MS. ARMENTA: I have no further questions.

19 MR. SANDSTRUM: All this talk about food and I'm
20 hungry. I suggest we take a quick break so I can grab
21 something to eat because I have not had breakfast. Let's
22 go off the record.

23 (Lunch recess was taken at 11:46 a.m.)

24 (Reconvening after lunch at 12:13 p.m.)

25 ///

Arturo Castaneda

CROSS-EXAMINATION

1
2 BY MR. SANDSTRUM:

3 Q Good afternoon. You know who I am. I'm Mike
4 Sandstrum. I represent Santana's Grill in a proceeding
5 before the Trademark Office.

6 It's my understanding and recollection that
7 you've been sitting through all the testimony that has been
8 taken since Monday until today; is that correct?

9 A No. Wednesday and today.

10 Q I apologize, you're right, Wednesday and today.
11 Just because I'm curious, I note yesterday you
12 weren't wearing sunglasses and today you're wearing
13 sunglasses. Is there a reason why?

14 A It's because of the light. It bothers me a lot.
15 That's the only reason.

16 Q That's fine. I was just curious. I want to make
17 sure I'm clear on the number of restaurants you have.

18 I understand it to be eight, correct?

19 A Yes.

20 Q Let's go over, starting with Yucca Valley, the
21 date that you purchased that restaurant. If you don't know
22 the exact date, the approximate date or year is fine.

23 A Legally when I purchased it, that was at the
24 beginning of March '98.

25 Q So March 1998?

Arturo Castaneda

1 A (No audible response.)

2 Q And that's when you started -- you became an
3 owner of Yucca Valley restaurant, correct?

4 A Legally speaking.

5 Q So you're legally the owner, you could sell it if
6 you want, correct?

7 A No -- oh, yes. No, because I still owe money.
8 I'm not done with the payments.

9 Q But if you sold it for a profit, could you use
10 that money to pay off the money owed?

11 MS. ARMENTA: Objection. Calls for speculation and
12 it's an improper hypothetical.

13 BY MR. SANDSTRUM:

14 Q You can still answer the question.

15 A No, no, because I would need to talk to Don
16 Arturo, and that is not a deal. The deal is to finish, you
17 know, paying off everything.

18 Q So if I understand your testimony correctly, at
19 least as to Yucca Valley, would you need Arturo Santana
20 Gallego's approval to be able to sell Yucca Valley?

21 A I'm not going to sell it, that's one thing. It's
22 not within me. I'm not going to sell it.

23 MR. SANDSTRUM: I'm going to move to strike as
24 nonresponsive.

25 Q My question was, if a buyer came to you to buy

Arturo Castaneda

1 Yucca Valley and you wanted to sell it, would you need
2 Arturo Santana Gallego's approval to do that?

3 A Yes.

4 Q Is that the --

5 MS. ARMENTA: Are you assuming with the use of
6 "Santana's Mexican Food" or without?

7 MR. SANDSTRUM: With the name of "Santana's Mexican
8 Food."

9 Q Is that the same with your other restaurants?

10 A Could be, yes.

11 Q Just so I understand the relationship a little
12 bit better, because I'm fairly new to all the facts, isn't
13 it true that Abelardo Santana was the one who introduced
14 you to Mr. Santana Gallego in connection with the purchase
15 of that Yucca Valley restaurant?

16 A Okay. I'm going clarify that. When the deal was
17 made regarding Yucca Valley, it was mentioned to me that
18 Abelardo and a brother mention to Arturo that I was a good
19 worker. The restaurant was not for me, it was for my
20 brother.

21 I went there in order to take a look twice, and
22 when the deal was to be made, I spoke with Don Arturo
23 Santana and Arturo Santana, Jr. that I didn't want -- that
24 if I was going to leave and move there, then the deals
25 would have to be with me because I didn't want any problems

Arturo Castaneda

1 with my brother because I was in the middle and I would be
2 an employee of my brother's, and I said if there is no good
3 business at this restaurant, I don't have to give any
4 explanations to my brother, so I said if the deals are
5 going to be made, then they have to be made with me. I
6 don't want anybody to tell them I'm a good worker because
7 you don't know me, so the deals need to be made with me or
8 no deal, otherwise, I would not be coming over.

9 Q With respect to -- what was the next restaurant
10 you opened using the name "Santana's Mexican Food"?

11 A 29 Palms.

12 Q Do you recall the month and year that it opened?

13 A October 1999 probably.

14 Q So that's located in 29 Palms, correct?

15 A Yes.

16 Q So you opened that restaurant about a little over
17 a year after you purchased the Yucca Valley restaurant,
18 correct?

19 A No.

20 Q I thought you testified that Yucca Valley was
21 purchased in March of 1998.

22 A Legally. I went to Yucca Valley in December of
23 '96. I worked for a year as the owner of the restaurant.
24 Everything was in my name, but legally it was sold to me --
25 he sold it to me in March of '98.

Arturo Castaneda

1 Q I'm still a little bit confused. I understand
2 that you started to work at the Yucca Valley restaurant in
3 1996. When you said everything was in your name, what is
4 everything? What does that mean?

5 A In '97 that was when he sold the restaurant to me
6 because I worked for three months just as an employee. It
7 wasn't in '98.

8 Q So in 1997 Mr. Santana Gallego sold you the Yucca
9 Valley restaurant?

10 A Yes.

11 Q Is that when you signed or entered into that
12 purchase -- written Purchase Agreement?

13 A I don't remember if it was that exact date. I
14 believe that the contract was in '98. I don't remember
15 exactly, but legally I began in '97 as the owner of the
16 business.

17 Q So you began as the owner of the Yucca Valley
18 restaurant before you signed the Purchase and Sale
19 Agreement, is that what you're telling me?

20 A I don't remember. I don't remember. I don't
21 remember. I'm somehow confused regarding the dates.

22 Q Let me do this analogy. If you own a car, right,
23 you have the right to sell the car, correct?

24 When you said you were owner but not the legal
25 owner, when you said you were the owner, could you have

Arturo Castaneda

1 sold the restaurant if you had the approval of Santana
2 Gallego?

3 A I wouldn't sell it.

4 Q Are you saying you were actually a manager of the
5 store or an owner before you signed the Purchase and Sale
6 Agreement?

7 A No, the owner, owner.

8 Q But then you're saying you were the legal owner,
9 according to you, after you signed the written Purchase and
10 Sale Agreement that you mentioned earlier, correct?

11 A Yes.

12 Q And your recollection is you signed that
13 agreement sometime in 1998, correct?

14 A No. It must have been in '97 because I was there
15 working only three months, so after that Arturo and his
16 wife got there to sign the paperwork, so it had to be that
17 date.

18 Q Who was running the restaurant at that time?

19 A At that time I just went there twice. I imagine
20 it would have to be a man named Sergio.

21 Q I mean, this is a long time ago, so dates are
22 dates, but I'll represent to you that Mr. Gallego testified
23 that he sold the Yucca Valley restaurant in 1999.

24 Does that refresh your recollection?

25 A No, no.

Arturo Castaneda

1 Q Sometime in 1998 you became what you call the
2 legal owner of the Yucca Valley restaurant, correct,
3 sometime in 1998?

4 A Since before, since '97.

5 Q Did you become the legal owner, according to your
6 testimony, in '97?

7 A Yes.

8 Q I'm kind of unclear. So that's when you signed
9 the Purchase Agreement?

10 A Yes.

11 Q And then in 1999, you just testified, you opened
12 up the 29 Palms restaurant, correct?

13 A Uh-huh.

14 Q Do you recall -- I think you said it was in
15 October?

16 A Yes, October. I don't remember exactly the
17 dates.

18 Q Approximately?

19 A Yes.

20 Q What is the next restaurant you opened?

21 A Sun City.

22 Q Why did you choose that location?

23 A Because it was offered to me.

24 Q From whom?

25 A A real estate person that sells restaurants.

Arturo Castaneda

1 Q When you bought that restaurant, before you
2 bought it, did you ask Mr. Santana Gallego if you could
3 purchase it?

4 A Yes.

5 Q Do you recall that conversation?

6 A No, I don't, the same as usual.

7 Q Do you recall the date that was opened?

8 A I opened in January of 2003, maybe.

9 Q But it was, to your recollection, in 2003,
10 correct?

11 A I don't remember exactly.

12 Q Where was the next restaurant you opened?

13 A In Riverside.

14 Q When was that opened?

15 A Like four months later after I open up in Sun
16 City.

17 Q So approximately in the year 2003 then?

18 A Yeah.

19 Q Where was the next restaurant that you opened
20 bearing the name "Santana's Mexican Food"?

21 A Joshua Tree.

22 Q Do you recall when that was opened?

23 A I don't recall. I don't remember the year
24 exactly.

25 Q Was it a year or so after the Riverside

Arturo Castaneda

1 restaurant was opened?

2 A Must have been a year and a little bit more -- a
3 little bit over a year.

4 Q Where was the next restaurant after that that you
5 opened that had the name "Santana's Mexican Food"?

6 A The one on University in Riverside.

7 Q When was that one opened?

8 A A little bit over a year later.

9 Q So around 2006?

10 A Yes.

11 Q Where was the next Santana's Mexican Food
12 restaurant that you opened?

13 A Hemet is the new one that I am trying to open.

14 Q Okay. It's not opened yet?

15 A We are trying. It's not what it should be yet.

16 Q But it is open?

17 A Yes.

18 Q That opened in 2007?

19 A Yes.

20 Q Do you own any other Mexican restaurants?

21 A Yes.

22 Q What are those?

23 A Chula Vista.

24 Q Okay. Any other ones?

25 A No.

Arturo Castaneda

1 Q So how many --

2 A Eight.

3 Q Santana's Mexican Food restaurants?

4 A No. Seven.

5 Q And your eighth restaurant is Chula Vista?

6 A Chula Vista.

7 Q Did you ever call the Chula Vista restaurant

8 "Santana's Mexican Food"?

9 A No.

10 Q Have you ever had any signage or menus or menu

11 boards that said "Santana's Mexican Food"?

12 A Probably the menus because I use a company, and

13 that company is for all of the menus.

14 Q So you did use a menu that has the "Santana's

15 Mexican Food" name on it at the Chula Vista restaurant?

16 A Mine, yes.

17 Q Are you still using that menu there today?

18 A Yes.

19 Q What is that restaurant called?

20 A Right now -- initially it was called "Jillian's

21 Taco Shop," and now the current name is "Santana Burrito

22 Mexican Food."

23 Q How long was it called "Jillian's Taco Shop"?

24 A A year, little over a year.

25 Q So about a year later you called it -- is it

Arturo Castaneda

1 Santana or Santana's?

2 A Santana Burrito.

3 Q Burrito Mexican Food. And did you get approval
4 of Mr. Santana Gallego to name it?

5 A He wanted me to put that name, "Santana Burrito."
6 That is why I changed the name.

7 Q Why did he want you to do that?

8 MS. ARMENTA: Objection. Calls for speculation.

9 BY MR. SANDSTRUM:

10 Q If you know.

11 A He open up a restaurant on University, and his
12 son had another one by then, and he thought it might be a
13 good thing because there were already three in San Diego.

14 Q Who is "he"?

15 A Don Arturo, Arturo Santana.

16 Q Who else has a restaurant named "Santana
17 Burrito"?

18 A Pedro, Pedro Santana.

19 Q Did you need to get his approval?

20 A Yes, yes.

21 Q And he said "yes," right?

22 A Yes.

23 Q What is Pedro Santana's restaurant called?

24 A Burrito Santana.

25 Q And yours is called "Santana Burrito Mexican

Arturo Castaneda

1 Food"?

2 A Yes, uh-huh.

3 Q And Mr. Santana Gallego owns a restaurant called
4 "Santana Burrito Mexican Grill" on University?

5 A That I don't know.

6 Q I thought you just testified he had a restaurant
7 called Santana --

8 A No, I don't know that --

9 MS. ARMENTA: What kind of affiliation, relationship.

10 THE INTERPRETER: I'm going to go with that. "What
11 kind of relationship there is between both of them."

12 BY MR. SANDSTRUM:

13 Q So you don't know whether or not Mr. Santana
14 Gallego has an ownership interest in a restaurant called
15 "Santana's Mexican Grill" or "Burrito Santana"?

16 A No, no, I don't.

17 Q Going back to your restaurant in Chula Vista,
18 when did that open up?

19 A When I did open that? About two years ago.

20 Q So about 2005, 2006?

21 A Yeah, somewhere around there.

22 Q Do you recall the month?

23 A No.

24 Q Just to make sure I understand, in 2006 sometime
25 you opened up a restaurant called "Jillian's Taco Shop" in

Arturo Castaneda

1 Chula Vista located in San Diego --

2 THE INTERPRETER: The name you gave to the taco shop?

3 BY MR. SANDSTRUM:

4 Q Jillian's Taco Shop located in Chula Vista, San
5 Diego County?

6 A In Chula Vista.

7 Q You used the Santana's Mexican Food menus that
8 you used at your other restaurants, correct?

9 A Mine, mine, my menus.

10 Q And you still use those menus there today?

11 A Yes.

12 Q Why?

13 A Because if I cannot possibly make another menu on
14 the side.

15 Q Why can't you make a menu called "Santana's
16 Burrito Mexican Food"?

17 A Well, the approval I receive from Don Arturo, he
18 had no objection to my using the new menus. If he said
19 "no," then I would have.

20 MR. ABELARDO SANTANA: (In Spanish.)

21 MS. ARMENTA: I agree with Abelardo. The witness said
22 "the same menus," not "new menus."

23 THE INTERPRETER: "The same menu," correction.

24 BY MR. SANDSTRUM:

25 Q That's fine. Why don't you want to change the

Arturo Castaneda

1 name of your menus to Santana's Burrito -- or Santana
2 Burrito Mexican Food?

3 MS. ARMENTA: Objection. Asked and answered.

4 You can answer.

5 THE WITNESS: When I was offered that restaurant, I
6 went and I spoke with Arturo Santana and Arturo Santana,
7 Jr., and they are the individuals that ever since I began,
8 I have been involved with.

9 When I asked them if I could possibly open that
10 restaurant there, first they opposed, they were not in
11 agreement, but later on they said that I should open it,
12 but I should not use the name "Santana's Mexican Food"
13 because of the problem that we have right now.

14 BY MR. SANDSTRUM:

15 Q You also got approval of Pedro Santana, correct?

16 A A year later he told me that I could put -- not
17 only that one, but all of them he wanted.

18 Q He wanted what?

19 A Santana Burrito, Santana Burrito.

20 Q So if I understand your testimony, Pedro -- a
21 year after you changed your name, Pedro allowed you --

22 A Yes, because of the problems that we are having,
23 he wanted me to name -- to use the name "Santana Burrito"
24 in all of the restaurants.

25 Q What other restaurants?

Arturo Castaneda

1 A The rest, the rest that I have mentioned.

2 Q Why don't you go through what restaurants you're
3 talking about. I'm confused.

4 MS. ARMENTA: Do you want me to read you the list?
5 You just went through them. Yucca Valley --

6 MR. SANDSTRUM: Not that. I'm confused whether he's
7 talking about Pedro's restaurants or --

8 MS. ARMENTA: Please.

9 THE WITNESS: Well, specifically it was the one in
10 Chula Vista. Let's not talk about the rest.

11 BY MR. SANDSTRUM:

12 Q Who asked you to change the name?

13 MS. ARMENTA: From what to what? Vague and ambiguous.

14 BY MR. SANDSTRUM:

15 Q Who asked you to change the name from --

16 A Arturo Santana and Pedro Santana.

17 Q And by "Arturo Santana," Junior?

18 A Gallego, Gallego, Gallego.

19 Q And they also requested that you change the rest
20 of your restaurants to Santana Burrito Mexican Food,
21 correct?

22 A Pedro, not Don Arturo.

23 Q Now I'm with you. How much do you still owe
24 Mr. Santana Gallego in connection with the purchase of the
25 Yucca Valley restaurant?

Arturo Castaneda

1 A I don't have -- I don't know how much.

2 Q Do you have an estimate?

3 A No, no.

4 Q Is there a place or document you could go to to
5 figure that out?

6 A Yes, I do have documents.

7 Q Where are those?

8 A My accountant has them, and I also have them. I
9 must have them at home.

10 Q Who is your accountant again?

11 A Perfect Balance.

12 Q Perfect Balance?

13 A Perfect Balance. It's a company.

14 Q Where are they located?

15 A Palm Desert.

16 Q Do you know their address?

17 A It's in Palm Desert.

18 Q Palm Desert is good enough for me.

19 Was there a written agreement between you and
20 Mr. Santana Gallego in connection with your ability to use
21 the Santana Mexican Food name on Mexican food restaurants?

22 A There must be one, and also orally spoken.

23 Q When you say there must be a written agreement,
24 why do you say that?

25 A Because I have to look for all of the papers

Arturo Castaneda

1 regarding the contract.

2 Q But as you sit here today, do you recall there is
3 a written agreement between you and Mr. Santana Gallego
4 allowing you to use the "Santana's Mexican Food" name?

5 A All the time.

6 Q That's nonresponsive.

7 As you sit here today, do you know one way or
8 another whether a written agreement exists between you and
9 Mr. Santana Gallego which allows you to use the "Santana's
10 Mexican Food" name?

11 A Yes.

12 Q So there is an agreement?

13 A Yes.

14 Q And there's also a Purchase and Sale Agreement,
15 correct?

16 A Yes.

17 Q How many times in 2007 did Mr. Santana Gallego
18 visit the Yucca Valley restaurant?

19 A Well, I couldn't say how many times.

20 Q Approximately.

21 A A month ago, that was the last time that he went
22 or maybe less.

23 Q Do you have an estimate how many times he's
24 visited the Yucca Valley restaurant in the last year?

25 A No.

Arturo Castaneda

1 Q More than 10, less than 10?

2 A No, no.

3 Q We're going to do the same question, how many
4 times in the last year has Mr. Santana Gallego visited your
5 restaurant in Sun City?

6 MS. ARMENTA: Objection. Asked and answered and calls
7 for speculation.

8 BY MR. SANDSTRUM:

9 Q To the extent you know.

10 A If I don't remember Yucca Valley, how am I going
11 to remember Sun City?

12 Q Okay. Same question for your restaurant located
13 at 6751 Indian Avenue, Riverside.

14 MS. ARMENTA: Same objection.

15 THE WITNESS: Same answer.

16 BY MR. SANDSTRUM:

17 Q For all your restaurants?

18 A Yes.

19 Q In connection with your Chula Vista restaurant,
20 are you paying Mr. Santana Gallego any type of royalty?

21 A No.

22 Q Are you paying Pedro Santana a royalty?

23 A No.

24 Q Are you paying anybody a royalty?

25 A No. Regarding the name, no.

Arturo Castaneda

1 Q Regarding use of the name, yes.

2 A No.

3 Q Are you the sole owner of the Chula Vista
4 restaurant?

5 A Yes.

6 Q Does somebody run your Yucca Valley restaurant
7 other than you, meaning do you rent that restaurant out to
8 somebody?

9 A Um, yes, yes, we are trying to rent.

10 Q Do you currently rent it to somebody?

11 A Yes.

12 Q Who is that?

13 A My sister-in-law.

14 Q What is her name?

15 A Griselda.

16 Q What is her last name?

17 A Sillas.

18 Q How about do you rent out any of your other
19 restaurants named "Santana's Mexican Food"?

20 A Yes.

21 Q Which ones?

22 A Oh, well, um, here is the question -- oh, I'm
23 sorry, what is the question for?

24 MS. ARMENTA: Object to the interpretation.

25 THE WITNESS: Is that something private? Do I need to

Arturo Castaneda

1 answer that?

2 MR. SANDSTRUM: I think you do.

3 THE INTERPRETER: I'll make a correction. "What is
4 the purpose of that question?"

5 MR. SANDSTRUM: That's for me to know.

6 THE INTERPRETER: That's the correction of my
7 translation.

8 MS. ARMENTA: Let me inquire off the record as for the
9 basis of feeling it is private.

10 MR. SANDSTRUM: Fine.

11 The witness and counsel are going outside to talk
12 about the basis of my last question, whether or not it's
13 private.

14 Off the record.

15 (A recess was taken.)

16 MS. ARMENTA: Let's go back on the record. I've
17 discussed the basis of Mr. Castaneda's reluctance to answer
18 these series of questions, and Mr. Castaneda will answer
19 the questions.

20 MR. SANDSTRUM: Can you read back the last question?

21 (The record was read.)

22 THE WITNESS: Indiana, Joshua Tree and Sun City.

23 BY MR. SANDSTRUM:

24 Q Who do you rent the Sun City restaurant to?

25 A To my brother-in-law.

Arturo Castaneda

1 Q What is his name?

2 A Santiago.

3 Q Last name?

4 A Chavez.

5 Q And the same question for the Riverside
6 restaurant.

7 A Nacho Ruiz.

8 Q And same question for Joshua Tree.

9 A My "congunio."

10 MR. ABELARDO SANTANA: "Brother-in-law."

11 THE WITNESS: Avalos.

12 BY MR. SANDSTRUM:

13 Q When you purchased the Yucca Valley restaurant,
14 did you have it appraised by anybody to determine the value
15 of the restaurant?

16 A No.

17 Q Who decided the purchase price of 1,080,000?

18 A Don Arturo.

19 Q Did you ask him what he based that on?

20 A No.

21 Q You just decided to pay 1,080,000 for it?

22 A Yes.

23 Q Did you do any investigation to determine whether
24 or not that was a reasonable price?

25 A No.

Arturo Castaneda

1 Q Isn't it true that Don Arturo, which I've been
2 referring to as Santana Gallego, is like a father figure to
3 you?

4 MS. ARMENTA: Objection. Vague and ambiguous,
5 irrelevant.

6 BY MR. SANDSTRUM:

7 Q You can answer.

8 A He's my friend, very good friend. I do have him
9 in very, very high esteem. He has been a person that I
10 can't say like a father, because he's the only one -- he's
11 already got children, his own children. I don't want to --
12 I would apply for possible adoption, but he's not going to
13 okay that.

14 MR. SANDSTRUM: Off the record real quick.

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

16 BY MR. SANDSTRUM:

17 Q I'm looking at Petitioner's Exhibit 11, 12 and
18 13 -- I'm sorry, just 11 and 12 -- they are two menus.

19 Are either Exhibit 11 or 12 a current menu?

20 A No.

21 Q Besides your Chula Vista restaurant, are all of
22 your other restaurants named -- only use the name
23 "Santana's Mexican Food"?

24 A Yes.

25 Q I'm looking at Petitioner's Exhibit 13, and just

Arturo Castaneda

1 to refresh my recollection, what restaurant is depicted in
2 this photograph?

3 A 29 Palms.

4 Q That's 29 Palms?

5 A Yes.

6 Q Looking at the first page of Petitioner's
7 Exhibit 13, Bates numbered PL00401, I'll represent to you
8 that it has the name "Santana's Mexican Grill."

9 Do you see that?

10 A Yes, that was something when everybody was okay,
11 that sign, he made a mistake, the guy that made it, he put
12 "Mexican Grill," and then I mentioned to Arturo, and he
13 said it's not a problem.

14 Q And it's still there today, correct?

15 A I don't remember. I believe that it was changed,
16 that we change it.

17 Q Do you recall how long ago? It's your
18 understanding that --

19 A Yes.

20 Q Let me finish the question so the record is
21 clear.

22 Is it your understanding that the sign that's
23 depicted on Petitioner's Exhibit 13, Bates numbered
24 PL00401, no longer exists today?

25 A I don't recall.

Arturo Castaneda

1 Q Do you recall ever advertising in the Yellow
2 Pages through the Internet your Yucca Valley restaurant and
3 29 Palms restaurant under the name "Santana's Mexican
4 Grill"?

5 A Yes.

6 Q Have you done that in the past?

7 A (No audible response.)

8 Q Why did you do that?

9 A And it's still there.

10 MS. ARMENTA: Objection. Asked and answered.

11 BY MR. SANDSTRUM:

12 Q So to this day you still advertise at least your
13 Yucca Valley restaurant and your 29 Palms restaurant under
14 the name "Santana's Mexican Grill"?

15 A "Mexican Food," not "Mexican Grill." No.

16 Q Have you ever advertised those two restaurants
17 using the name "Santana's Mexican Grill"?

18 A As far as I can recall, no.

19 Q I'm going to mark as the next exhibit for
20 Respondent which, I believe, is Respondent's Exhibit 8, a
21 collective exhibit of four pages under the website
22 www.yellowpages-ads.com with a date of June 20, 2003, which
23 shows Santana's Mexican Grill for your restaurants located
24 at Yucca Valley -- Sun Valley and 29 Palms.

25 MS. ARMENTA: May I see the document, please.

Arturo Castaneda

1 MR. SANDSTRUM: Yes. Just for the record, these
2 exhibits are Bates numbered SG00299, SG00291, -293 and
3 -299.

4 (Exhibit R-8 was marked for identification.)

5 MS. ARMENTA: Are you representing this is one
6 document?

7 MR. SANDSTRUM: No. I'm representing that's four
8 pages.

9 MS. ARMENTA: Did you know that two of the documents
10 have the same Bates number?

11 MR. SANDSTRUM: That's my mistake. We can take two of
12 them off. We don't need to have duplicates.

13 MS. ARMENTA: You know they're not sequential, right?

14 MR. SANDSTRUM: Out of those Bates numbers I'm going
15 to put them in chronological order.

16 MS. ARMENTA: Well, chronological order? That means
17 date.

18 MR. SANDSTRUM: I'm sorry, sequential order.

19 Now Respondent's Exhibit 8 is three pages.

20 Q Isn't it true this is --

21 MS. ARMENTA: Let's read into the record what Bates
22 numbers now are part of this exhibit because it's not
23 clear.

24 MR. SANDSTRUM: Respondent's Exhibit 8 contains Bates
25 numbers SG00291, -293 and -299.

Arturo Castaneda

1 Q Isn't it true that you advertised at least in or
2 around June 2003 under the name "Santana's Mexican Grill"
3 for your restaurant located at 56547 29 Palms, Yucca Valley
4 and 73860 Sun Valey, 29 Palms?

5 MS. ARMENTA: Objection. Lacks foundation.

6 THE WITNESS: Probably so. I don't remember having
7 used "Santana's Mexican Grill," but here is the papers.

8 MS. ARMENTA: Do you recognize those papers though?
9 Do you know if you've ever seen them before?

10 THE WITNESS: No, I don't recall.

11 MS. ARMENTA: Object to any questions about this
12 document for lack of authenticity and foundation.

13 MR. SANDSTRUM: It's available to the general public,
14 so we'll get them in by a Notice of Reliance.

15 MS. ARMENTA: You can do that, you just can't ask
16 questions to him about it.

17 MR. SANDSTRUM: I can ask questions, and you can
18 object. I'm done anyway.

19 Q Have you ever missed a monthly payment in
20 connection with your Purchase Agreement for the Yucca
21 Valley restaurant?

22 A Never.

23 Q When is the last time you spoke with Pedro
24 Santana?

25 A Gee, I don't remember. I just don't.

Arturo Castaneda

1 Q A year ago, two years ago, a month ago?

2 A I don't remember.

3 Q You have no recollection at all?

4 A It must have been three, five months ago.

5 Q When is the last time you spoke with --

6 THE INTERPRETER: I'm sorry, did I say "It must have
7 been"? I should have said, "It could have been."

8 BY MR. SANDSTRUM:

9 Q When is the last time you spoke with Arturo
10 Santana Lee?

11 A Yesterday.

12 Q Besides yesterday.

13 A The day before.

14 Q When is the last time -- did you speak with
15 Arturo Santana Lee, besides this week, within the last
16 month?

17 A Yes, probably.

18 Q How often within the last year have you spoken
19 with Arturo Santana Lee?

20 A Very, very rarely, not much.

21 Q How about how often in 2006 did you speak with
22 Arturo Santana Lee?

23 A I don't remember.

24 Q Once, twice? Can you give me an estimate?

25 A I don't remember.

Arturo Castaneda

1 Q Would it be the same answer for 2005?

2 A Same.

3 Q When you pay Arturo Santana Gallego the \$3,000
4 monthly installment, do you pay by cash or check?

5 A Check.

6 Q Where do you bank at?

7 MS. ARMENTA: Objection. That invades the witness'
8 financial privacy and it's not relevant and instruct the
9 witness not to answer.

10 MR. SANDSTRUM: What bank he uses is private?

11 MS. ARMENTA: Sorry, that's my instruction.

12 BY MR. SANDSTRUM:

13 Q Are you going to listen to your counsel?

14 A Yes.

15 Q Or do you care?

16 MR. SANDSTRUM: You know there's a negative
17 presumption with the Trademark Office when you instruct the
18 witness not to answer.

19 MS. ARMENTA: I have no idea why where he banks would
20 be relevant in any way, shape or form.

21 MR. SANDSTRUM: It will be relevant eventually.

22 MS. ARMENTA: If it is, we'll bring him back on
23 rebuttal. If you want to give me an offer of proof, I'm
24 open to it.

25 MR. SANDSTRUM: It will be relevant in Federal Court.

Arturo Castaneda

1 Just as you did yesterday with my client, I want it noted
2 on the record counsel is making snide remarks.

3 MS. ARMENTA: The record speaks for itself.

4 MR. SANDSTRUM: It can't hear your snide remarks.

5 Unless you got that down, did you? I didn't
6 think so.

7 MS. ARMENTA: Everything I have said the reporter has
8 gotten.

9 MR. SANDSTRUM: Except for that.

10 MS. ARMENTA: Except for what?

11 MR. SANDSTRUM: We're done.

12 MS. ARMENTA: Why don't you put it on the record.

13 MR. SANDSTRUM: You did what you said Claudia did.

14 MS. ARMENTA: What?

15 MR. SANDSTRUM: You know what you did. I'm not going
16 to mimic what you did.

17 MS. ARMENTA: I honestly do not know what you're
18 talking about. If you have something to say, please feel
19 free to put it in the record.

20 MR. SANDSTRUM: I just did, and we're done.

21 MS. ARMENTA: Okay.

22 BY MR. SANDSTRUM:

23 Q I'm going to show the witness Respondent's
24 Exhibit 3.

25 Do your current menus still look like this?

Arturo Castaneda

1 A Yes.

2 Q Here is page 2.

3 A Yes.

4 Q Do your current menus at your other restaurants
5 look like Respondent's Exhibit 4?

6 A Yes.

7 MR. SANDSTRUM: I'm almost done. I just want to look
8 at my notes.

9 MS. ARMENTA: Could you read me back the last question
10 and answer, please.

11 (The record was read.)

12 MS. ARMENTA: May I see the Exhibit 4?

13 MR. SANDSTRUM: It's the little version.

14 I'm about five minutes from being done. I'll
15 take a two-minute break.

16 (A recess was taken.)

17 MR. SANDSTRUM: Let's go back on the record.

18 Q Is it your understanding if you breach the
19 Purchase and Sale Agreement that you have in connection
20 with the Yucca Valley restaurant that Mr. Santana Gallego
21 can take back the Yucca Valley restaurant?

22 A Yes, we would speak about it.

23 Q But could he take it back?

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

Arturo Castaneda

1 You can answer to the extent you understand.

2 THE WITNESS: We will talk. We always talk first
3 before --

4 BY MR. SANDSTRUM:

5 Q If you couldn't come to an understanding or
6 agreement, if you breach the Purchase and Sale Agreement
7 under your agreement with Mr. Santana Gallego, could he
8 take back the Yucca Valley restaurant?

9 MS. ARMENTA: Same objection.

10 BY MR. SANDSTRUM:

11 Q Is it your understanding that he could take back
12 the Yucca Valley restaurant?

13 A Yes, yes.

14 Q Isn't it also true that Abelardo Santana Lee, his
15 corporation, Santana's Grill, is suing you in Federal Court
16 for trademark infringement?

17 A I did not realize until I received a bunch of
18 papers this high. I did not know.

19 Q So you are being sued, correct?

20 A Right now, well, that is the reason that we are
21 here.

22 Q So you have an interest in these proceedings with
23 the Trademark Office that the petitioner, Santana Gallego,
24 wins, correct?

25 A I want to solve -- to be able to solve this

Arturo Castaneda

1 problem that is taking place right now. We have never had
2 any problems before, me and Abelardo, we will talk, but
3 when this problem took place, he let me know. He asked me
4 if I could possibly change the name, and we talked because
5 he had worked using the name "Santana's Mexican Food," and
6 I told him that I have also worked for a very long time,
7 and I don't think it is fair for something like that.

8 MR. ABELARDO SANTANA: When he mentioned, he said "up
9 there."

10 THE INTERPRETER: I'm sorry?

11 MS. ARMENTA: I'm sorry, I didn't hear that.

12 MR. ABELARDO SANTANA: Arturo mentioned --

13 (A conversation was held in Spanish.)

14 MR. SANDSTRUM: I have no more questions.

15 THE INTERPRETER: May I go back for one second with
16 the witness?

17 MR. SANDSTRUM: Yes.

18 (A conversation was held between
19 the witness and the interpreter.)

20 THE WITNESS: Up there, up north in California.

21 THE INTERPRETER: Thank you.

22 MS. ARMENTA: I have no questions.

23 MR. SANDSTRUM: We'll do the same stipulation then.

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

25 MS. ARMENTA: Counsel and I have discussed the

Arturo Castaneda

1 appropriate stipulation, both of us wanting to ensure that
2 we comply with the rules in all respects, so when we both
3 review the rules, we'll provide via email the court
4 reporter the appropriate stipulation that will cover all
5 the testimonial depositions that have been taken this week.

6 MR. SANDSTRUM: At least by Monday because I'm
7 traveling tomorrow.

8 MS. ARMENTA: That's fine.

9
10 (Whereupon, the following stipulation was agreed upon
11 by counsel in the Deposition of Claudia Vallarta-Santana,
12 taken Monday, January 28, 2008:

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

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

17 How long will it take to prepare? Not long.

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

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

24 MR. SANDSTRUM: Let me think about that real quick.
25 Let's go off the record.

Arturo Castaneda

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(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 1:27 p.m.)

* * *

Arturo Castaneda

Declaration Under Penalty of Perjury

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I, ARTURO CASTANEDA, 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 CASTANEDA

Arturo Castaneda

1 STATE OF CALIFORNIA)
2 COUNTY OF ORANGE) ss.
3)

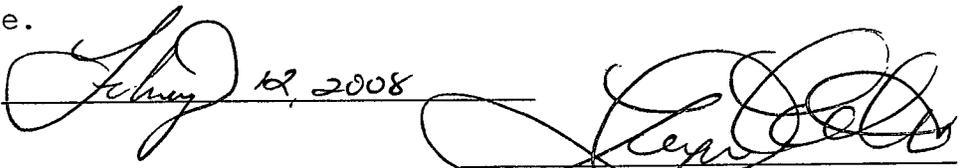
4 I, LEXANN CHRISTY, CSR No. 7932, in and for the
5 state of California, do hereby certify:

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

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

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

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

23 Dated: February 12, 2008
24 

LEXANN CHRISTY
CSR NO. 7932

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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

1 REPORTER'S CERTIFICATION OF CERTIFIED COPY

2
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5
6 I, LEXANN CHRISTY, Certified Shorthand Reporter,
7 Certificate No. 7932, for the State of
8 California, hereby certify:

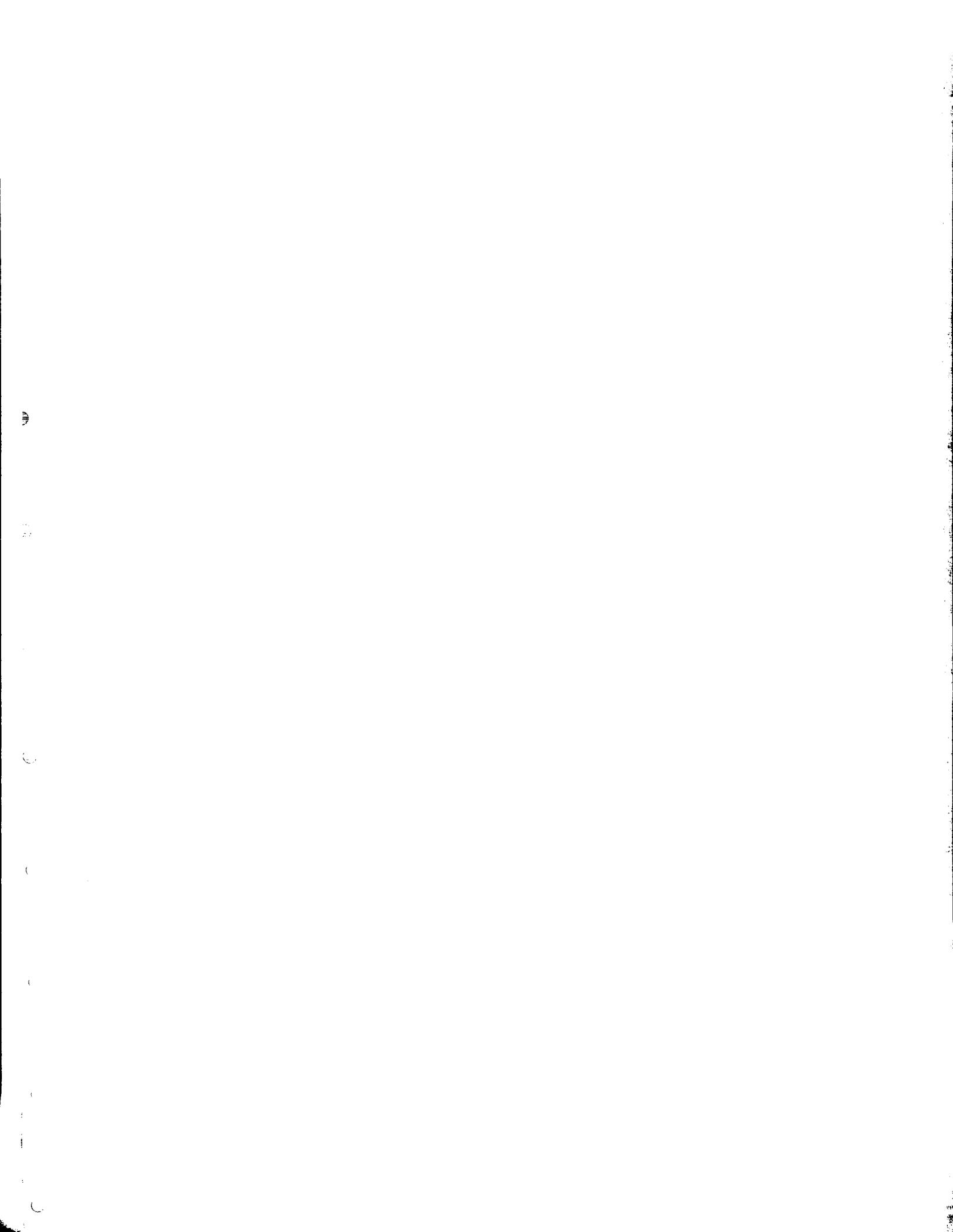
9 The foregoing is a true and correct copy of the
10 original transcript of the proceeding taken before me
11 as thereon stated.

12
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14 Dated:

February 12, 2008

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18 LEXANN CHRISTY, CSR 7932
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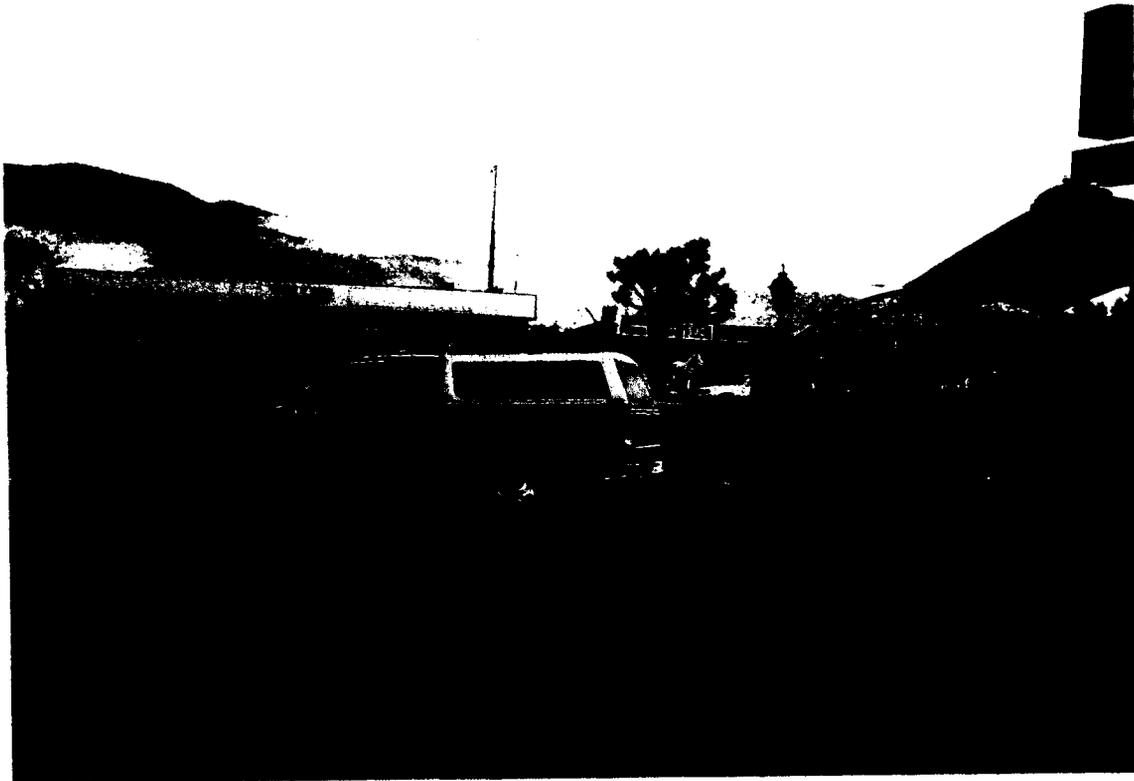
PL00415



PL00416

14 pages

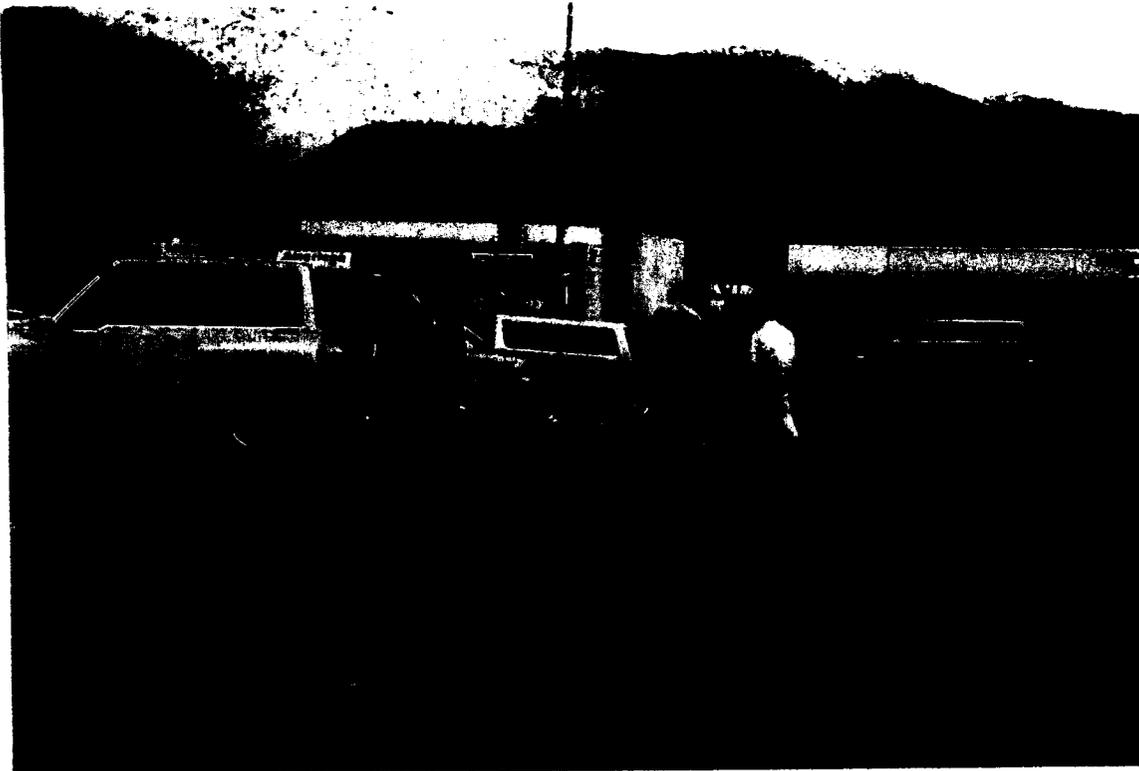
Petitioner's Exhibit No. 10
Case No. 92043152
Gallego vs. Santana's Grill



PL00431



PL00432



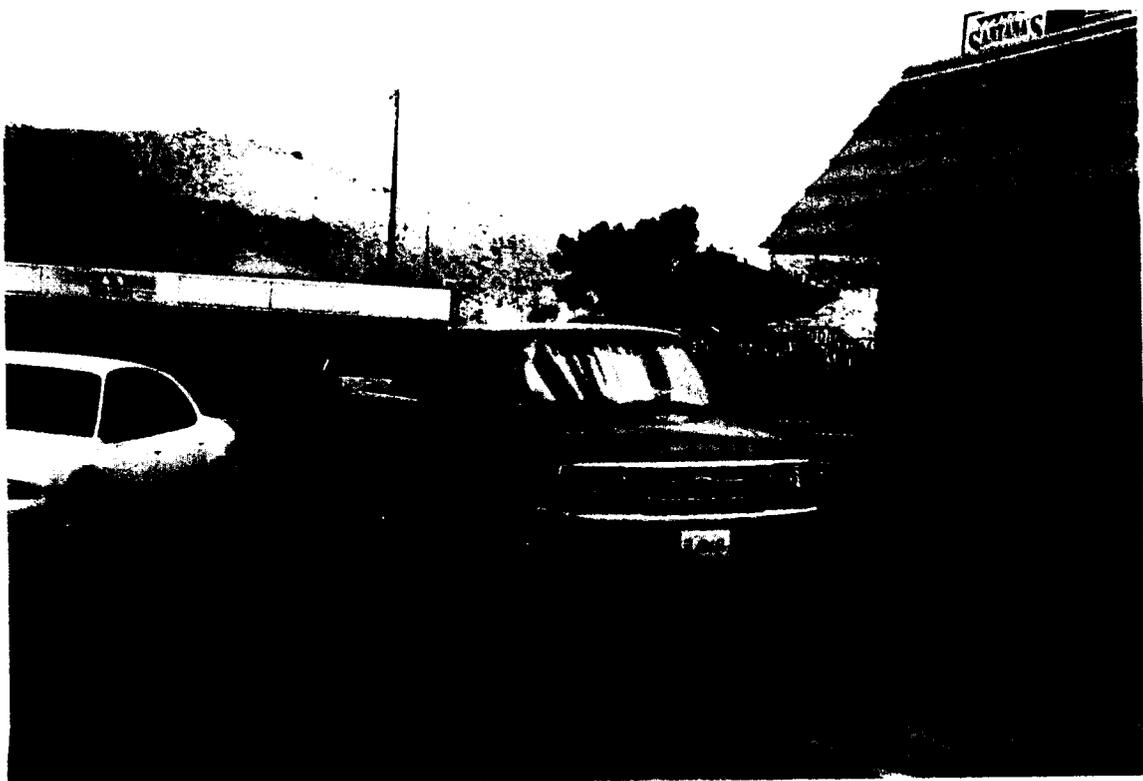
PL00429



PL00430



PL00427



PL00428



PL00425



PL00426



PL00423



PL00424



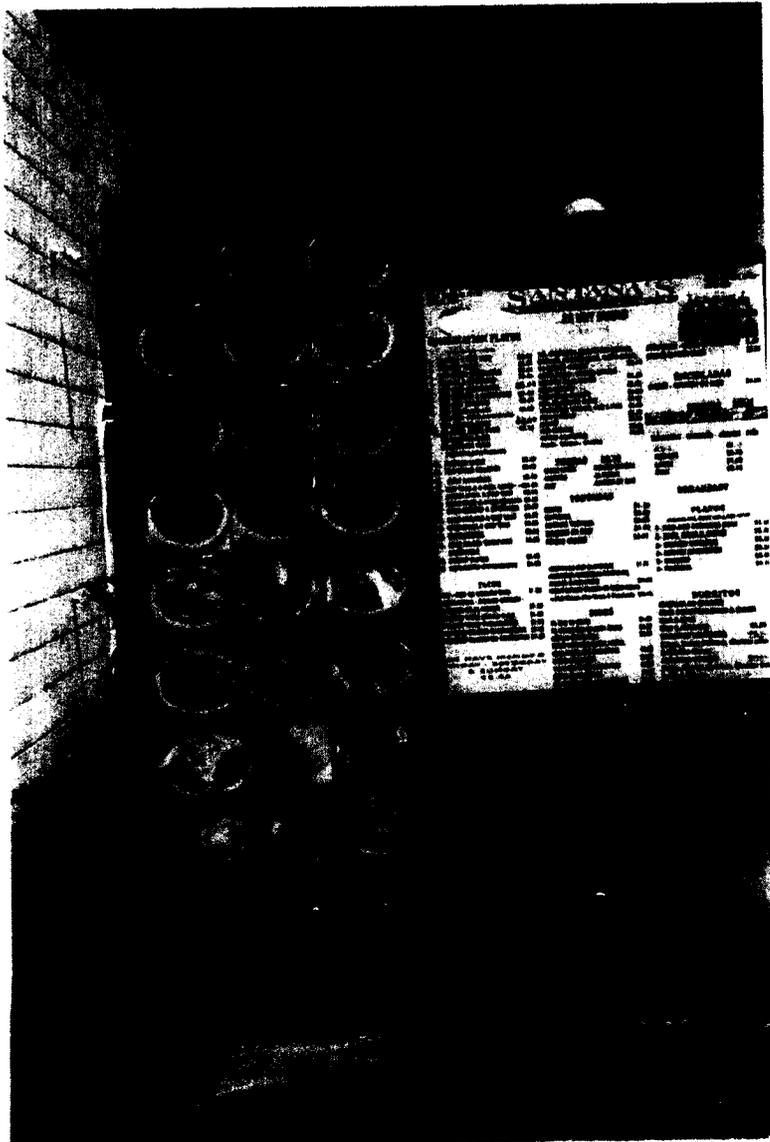
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PL00422



PL00419



PL00420



PL00417



PL00418



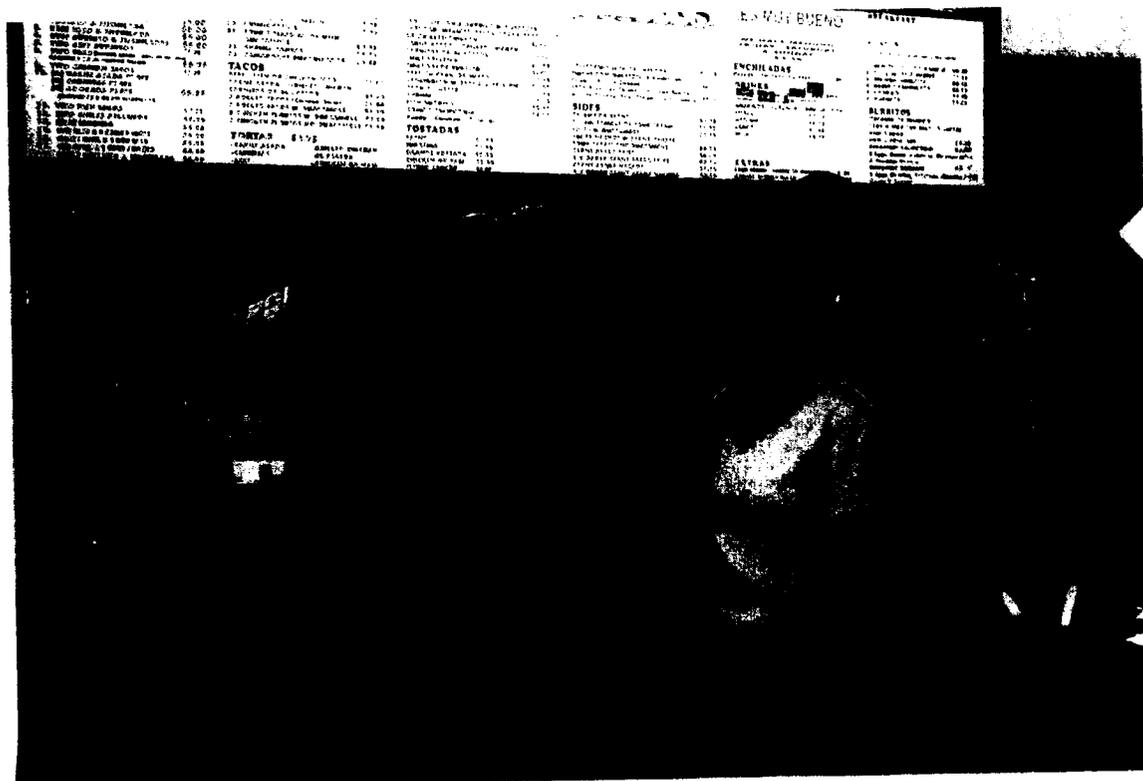
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PL00434



PL00435



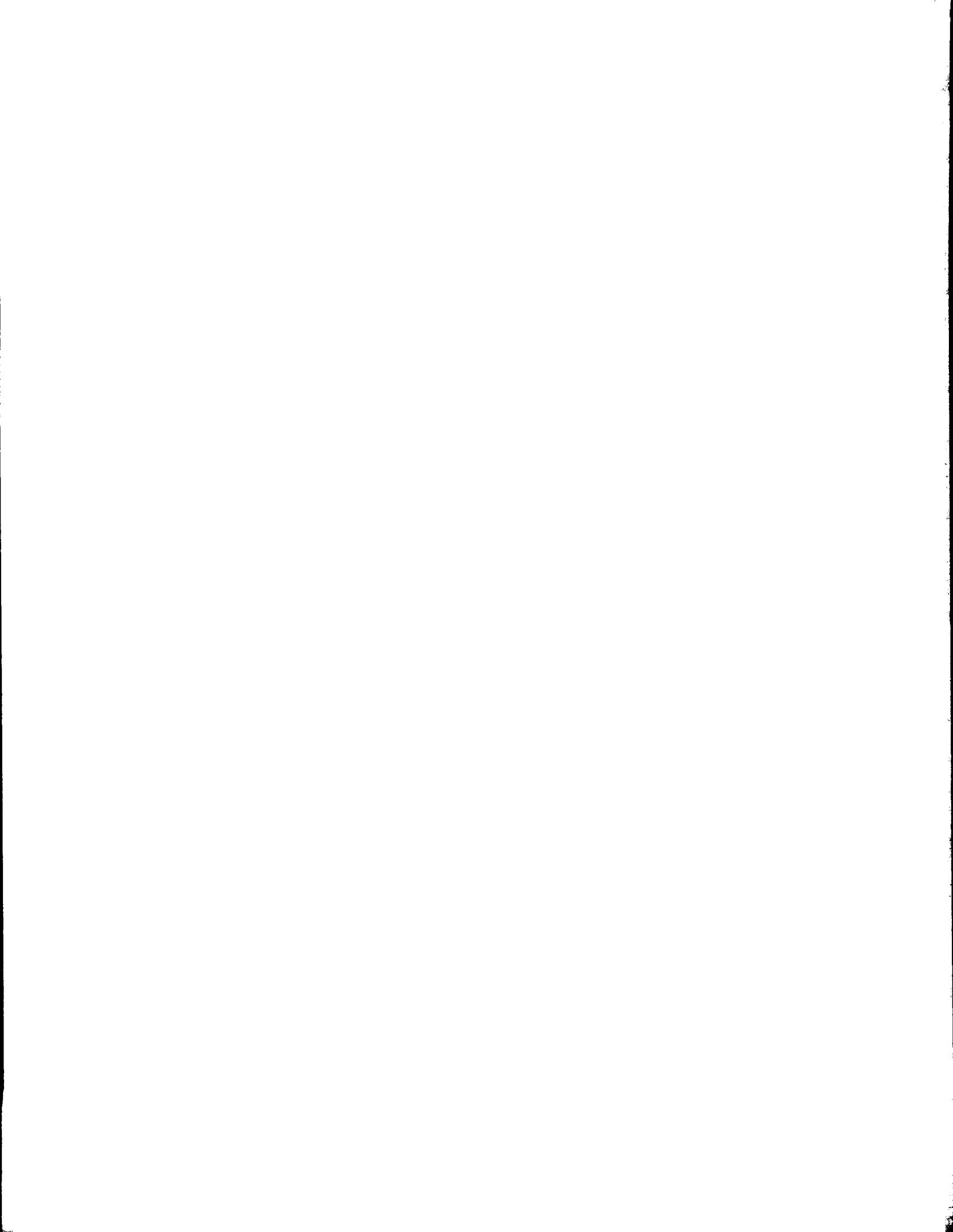
PL00436



PL00439



PL00440



BREAKFAST PLATES

Includes coffee, glass and a fruit coffee

- 1. Ham & Cheddar Eggs 4.25
- 2. Egg, Salsa & Chorizo 4.25
- 3. Spanish Omelette 4.25
- 4. Turkey & Cheddar 4.25
- 5. Chorizo 5.25
- 6. Machita 5.25

BREAKFAST BURRITO

- 1. Machita or Chorizo 3.00
- 2. Eggs, w/Mexican Salsa & Cheese 3.00
- 3. Ham & Eggs 3.00
- 4. Ham & Potatoes 3.00
- 5. Breakfast California 2 Eggs, Bacon, Potatoes, Mexican Salsa, Beans & Cheddar Cheese 3.25
- 6. Ranchero Burrito 2 Eggs, Chorizo, Potatoes, Mexican Salsa, Beans & Cheese 3.25

73680 SUN VALLEY DR.
TWENTYNINE PALMS, CA. 92277

(760) 361-0202

28005 Bradley Rd.
Sun City, CA 92301

Tel 951-679-6416
Fax 951-679-1638

56547 29 PALMS HWY.
YUCCA VALLEY, CA. 92284

Tel (760) 228-3044
Fax (760) 369-6596



Petitioner's Exhibit No. 11
Case No. 92043152
Gallego vs. Santana's Grill

1 page

6751 INDIANA AVE RIVERSIDE, CA. 92506

(951) 786-0996

We Use 100% Vegetable Oil

COMBINATION PLATES

Includes rice & beans

1. Tostada & Beef/Taco	6.60
2. Two Beef/Tacos	6.60
3. Two Cheese Enchilada	6.60
4. Tostada & Enchilada	6.60
5. Beef/Taco & Enchilada	6.60
6. Beef/Burrito & Enchilada	6.60
7. Two Beef/Burritos	6.75
8. Two Tacos	6.75
(Carni Asada, Grilled Chicken, Grilled Ordi Pastor/Asado)	
9. Two Chicken Tacos	6.50
10. A Carni Asada Plate B, Grilled Plate C, Adobada Plate (includes Carni Asada)	6.75
11. Two Fish Tacos	6.60
12. Two Chiles Rellenos	6.75
13. Steak Ranchero	6.75
14. Beef/Tacos & 3 Rolled Tacos	6.50
15. Chicos Enchilada & 4 Fish Taco	6.50
16. Chicken Burrito & 4 Chiles Rellenos	6.50
17. Chila Relleno & Enchilada	6.50
18. Chila Relleno Beef/Taco	6.50
19. Quesadilla & Beef/Taco	6.50
20. Chimichanga	6.50
21. 4 Rolled Tacos w/Guacamole	6.50
22. Shrimp Fajitas	6.50
23. Camarones Empañados	6.50
24. California Combination (Ribs & Beans) Carni Asada, Grilled Chicken or Asado	6.50

TACOS

0 Beef, Fish or Chicken Tacos	1.75
0 Carni Asada, Grilled Chicken	2.10
0 Carnitas Al Pastor	1.50
0 3 Rolled Tacos Chicos only	2.10
0 3 Rolled Tacos w/Ordeño	2.10
0 3 Chicken Fajitas w/Ordeño	2.10
0 3 Chicken Fajitas No Ordeño	1.60

TORTAS

0 Carni Asada	3.50
0 Carnitas	3.50
0 Beef	3.50
0 Grilled Chicken	3.50
0 Al Pastor	3.50
0 Ham	3.25

TOSTADAS

0 Beans	4.65
0 Supremo	3.75
0 Grande	4.75
0 Chicken Or Beef	2.50
0 Flying Saucer	4.00

BURRITOS

0 1 lb California Burrito w/Potatoes, Cheddar, Mexican Salsa, Carni Asada, or Grilled Chicken	3.60
0 Carni Asada, Grilled Chicken or Al Pastor	3.60
0 Chila Relleno	3.60
0 Chila Verde Burrito	3.60
0 Beef, Chicken or Mixed	3.60
0 Vegetarian w/Beans, Rice & Pico	2.65
0 Bean & Cheese	2.40
0 Shrimp Burrito	4.00
0 Fish Burrito	3.00

QUESADILLAS

0 California Jack Or Cheddar	2.20
0 Mushroom Chicken Quesadilla & Jack Cheese	6.40
0 Teato Grilled Chicken, or Carni Asada, w/Jack Cheese Sour Cream, Guacamole	6.40

SIDE ORDERS

0 1/2 Pt Rice or Bean	4.45
0 1/2 Pt Guacamole or Sour Cream	4.75
0 Chips w/Guacamole	4.75
0 Super Nachos w/Beans, Cheese, Sour Cream and Guacamole	4.75
0 Carni Asada Fries	4.45
0 1/2 Order Carni Asada Fries	6.50
0 Carni Asada Nachos	4.25
0 1/2 Order Carni Asada Nachos	4.50
0 Chimichanga	2.50
0 Nachos with Salsa	2.50

ENCHILADAS

0 Cheese, Chicken or Beef	3.50
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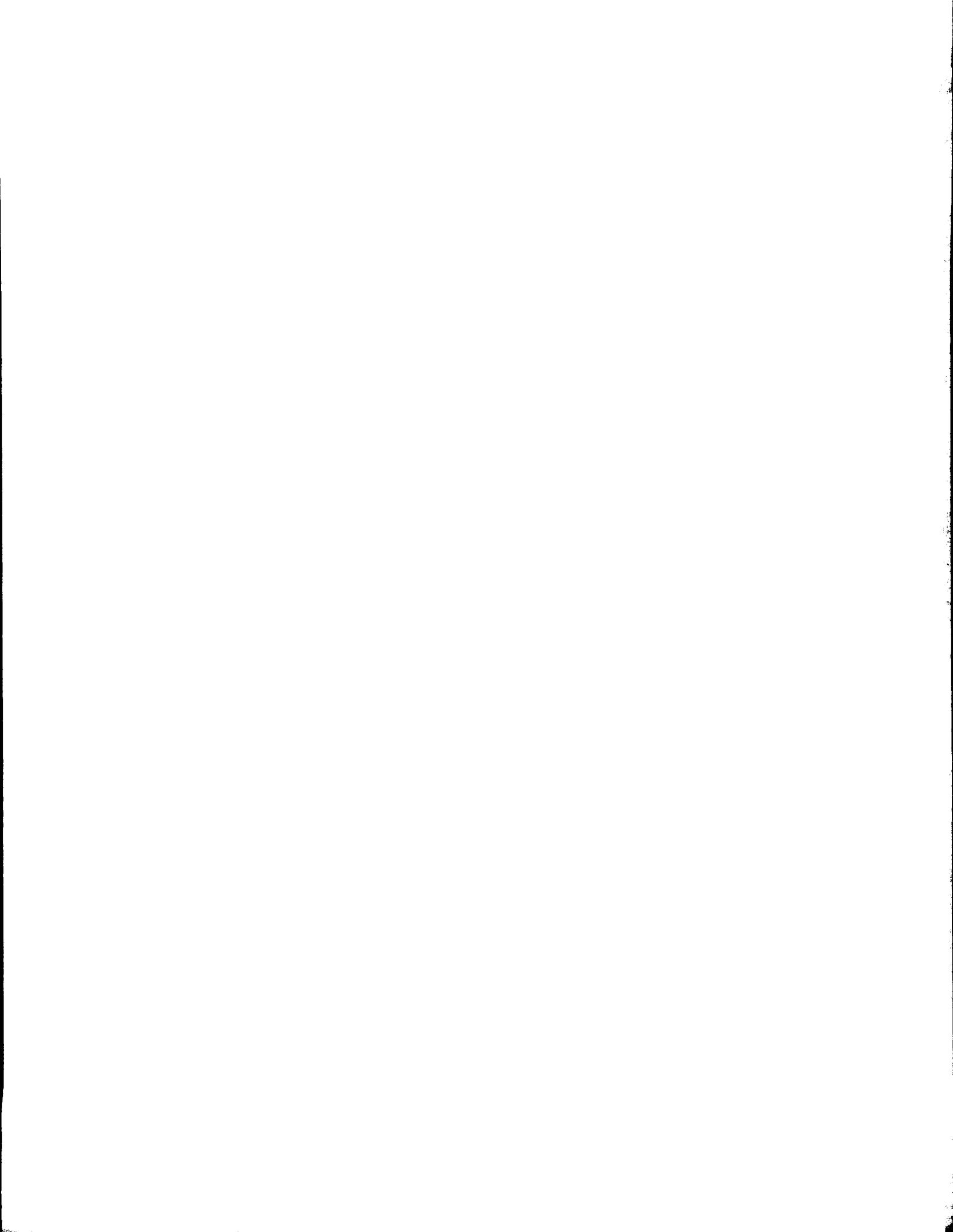
EXTRAS

0 Sour Cream	4.75
0 Cheese	4.75
0 Guacamole	4.75
0 Pico de Gallo	4.75

DRINKS

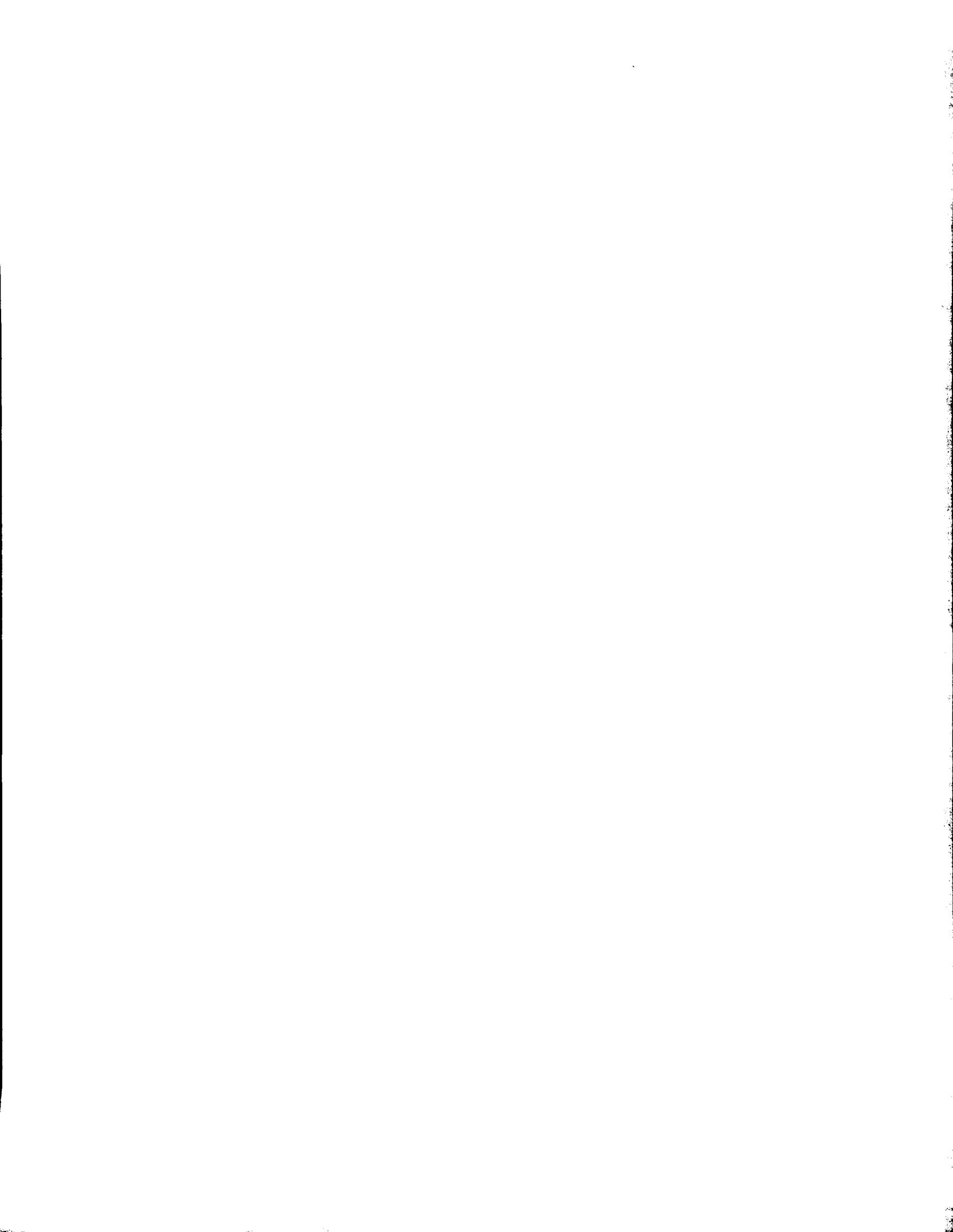
Coke, Diet Coke, Sprite
 Root Beer, Dr Pepper,
 Mr. Pibb, Raspberry Tea,
 Jamaica, Tamarind, Horchita, Piña
 Modif. 1.65
 Large-1.80 Milk-0.35

FRIDAY, SATURDAY & SUNDAY (All Day)



INCLUDES RICE, BEANS, AND A FREE COFFEE
Served From 6-11 AM

(Friday, Saturday & Sunday 3.50 All Day)





PL00400



PL00401

8 pages

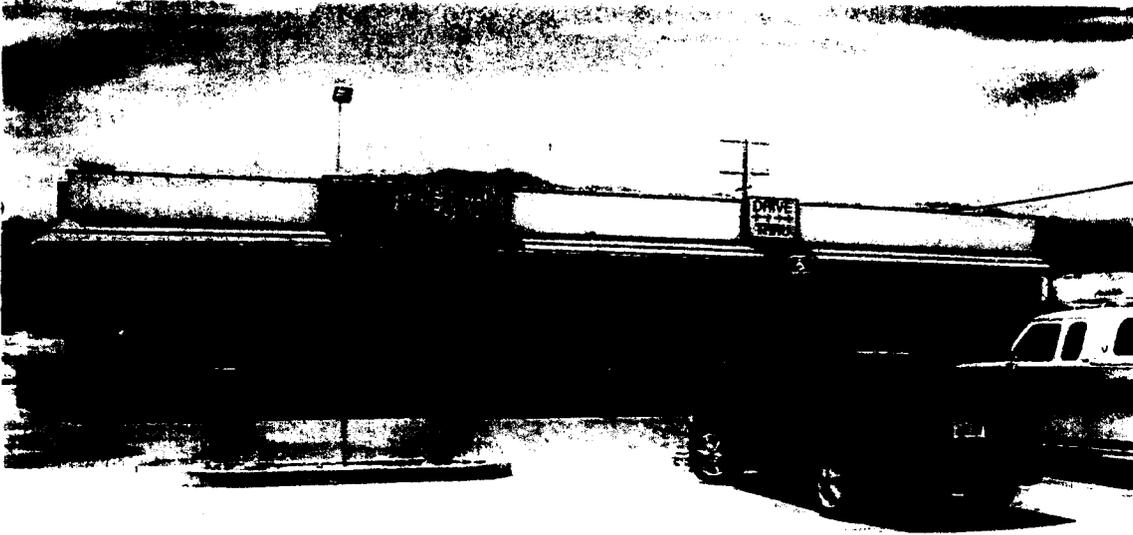
Petitioner's Exhibit No. 13
Case No. 92043152
Gallego vs. Santana's Grill



PL00402



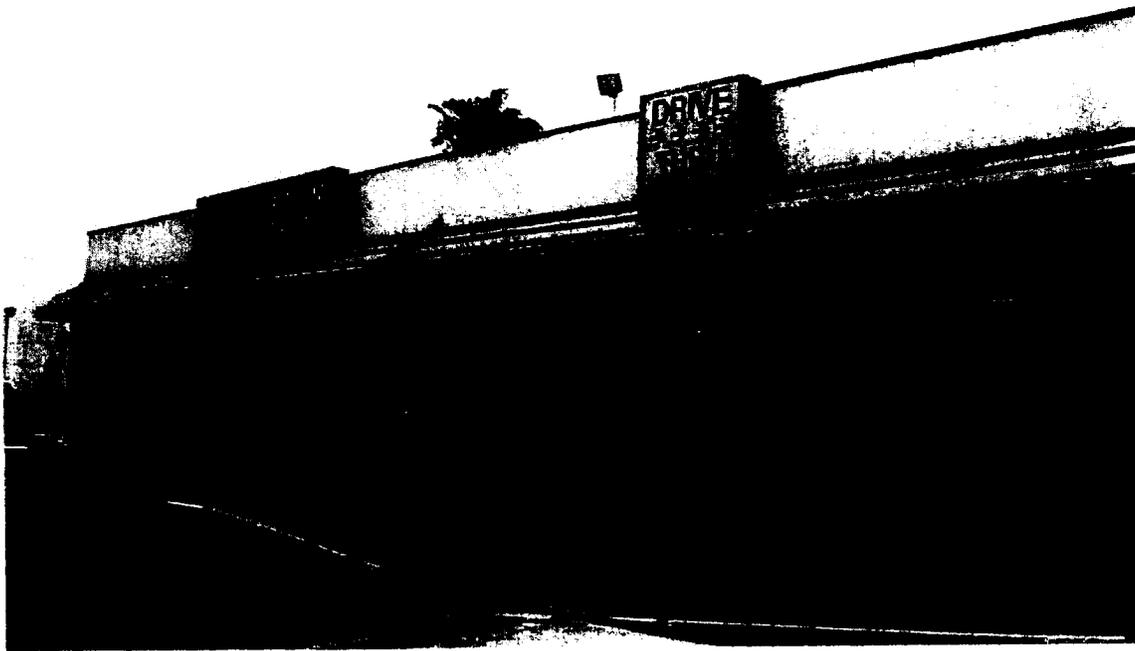
PL00403



PL00404



PL00405



PL00406



PL00407



PL00408



PL00409



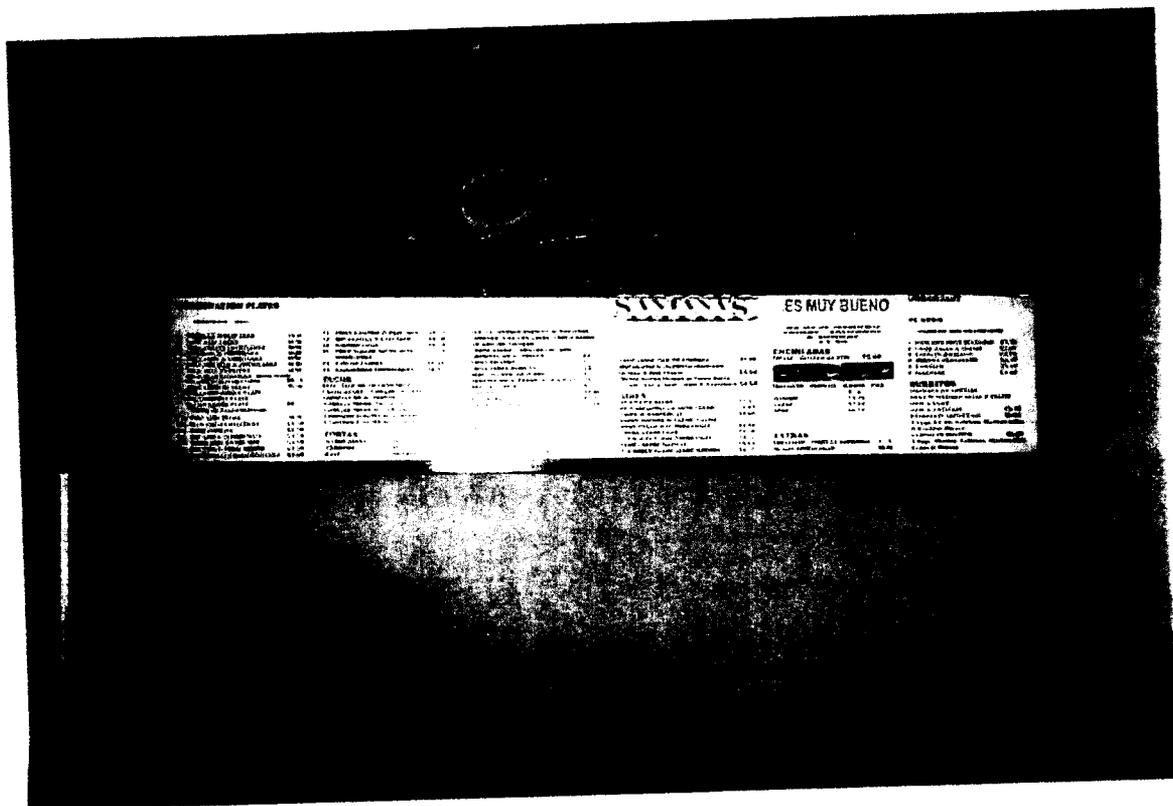
PL00410



PL00411



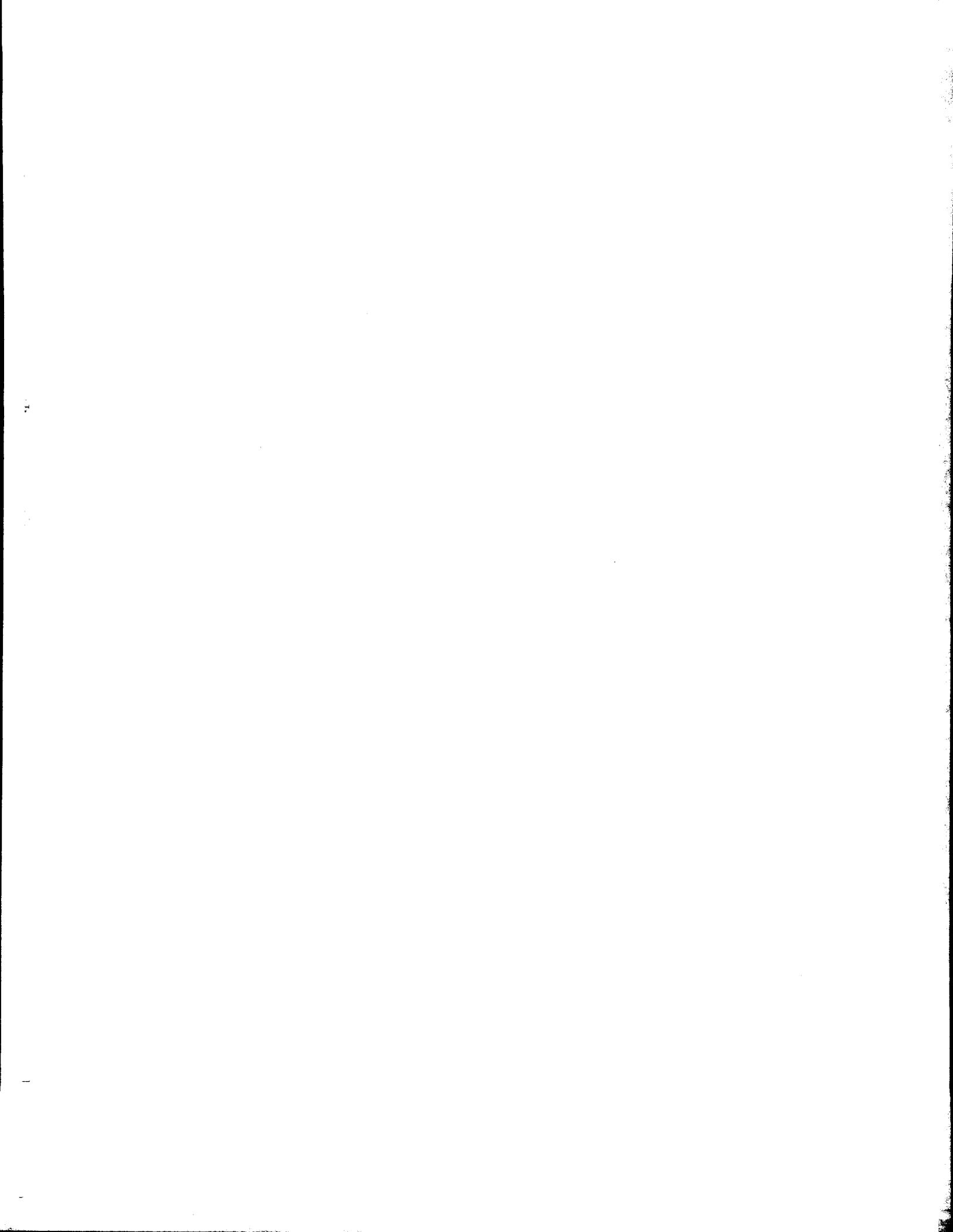
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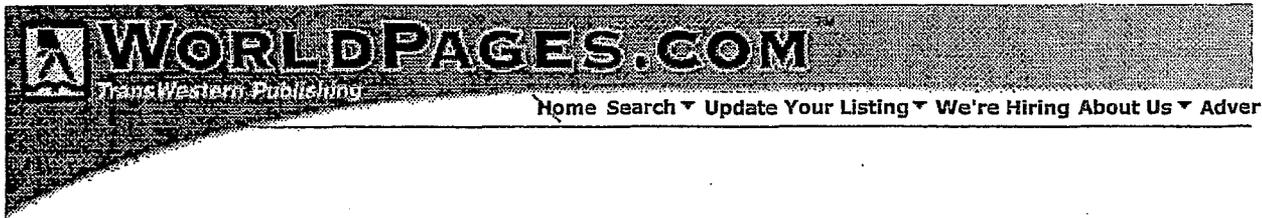


PL00413



PL00414





Santana's Mexican Grill

SANTANA'S MEXICAN GRILL
Breakfast • Lunch • Dinner
Open 24 Hours • Drive-Thru

...Es Muy Bueno!
Tacos • Enchiladas • Burritos
Chile Rellanos • Chimichanga
Flautas • Vegetarian Dishes • To
Tostados • Quesadillas • Nach
Menudo Served Fri • Sat • Su

YUCCA VALLEY 29 PALM
228-3044
56547 29 Palms Hwy

361-02
73680 Sun Va
(At Adobe)

Santana's Mexican Grill

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

Classifications:

- Restaurants

Keywords:

This ad appeared in the Morongo, CA directory which is distributed in the following communiti

- Yucca Valley, CA (San Bernardino County)
- Twentynine Palms, CA (San Bernardino County)
- Pioneertown, CA (San Bernardino County)
- Morongo Valley, CA (San Bernardino County)
- Landers, CA (San Bernardino County)

Respondent's Exhibit No. 8
Case No. 92043152
Gallego vs. Santana Grill

3 pages

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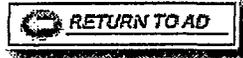
SANTANA'S
 MEXICAN GRILL

Es Muy Bu
 Tacos • Enchiladas
 Chile Rellanos • Ch
 Flautas • Vegetarian D
 Tostados • Quesadill
 Menudo Served Fri

YUCCA VALLEY
228-3044
 56547 29 Palms Hwy

3
 73

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



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Santana's Mexican Grill - Restaurants

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SANTANA'S MEXICAN GRILL

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

...Es Muy Bueno!

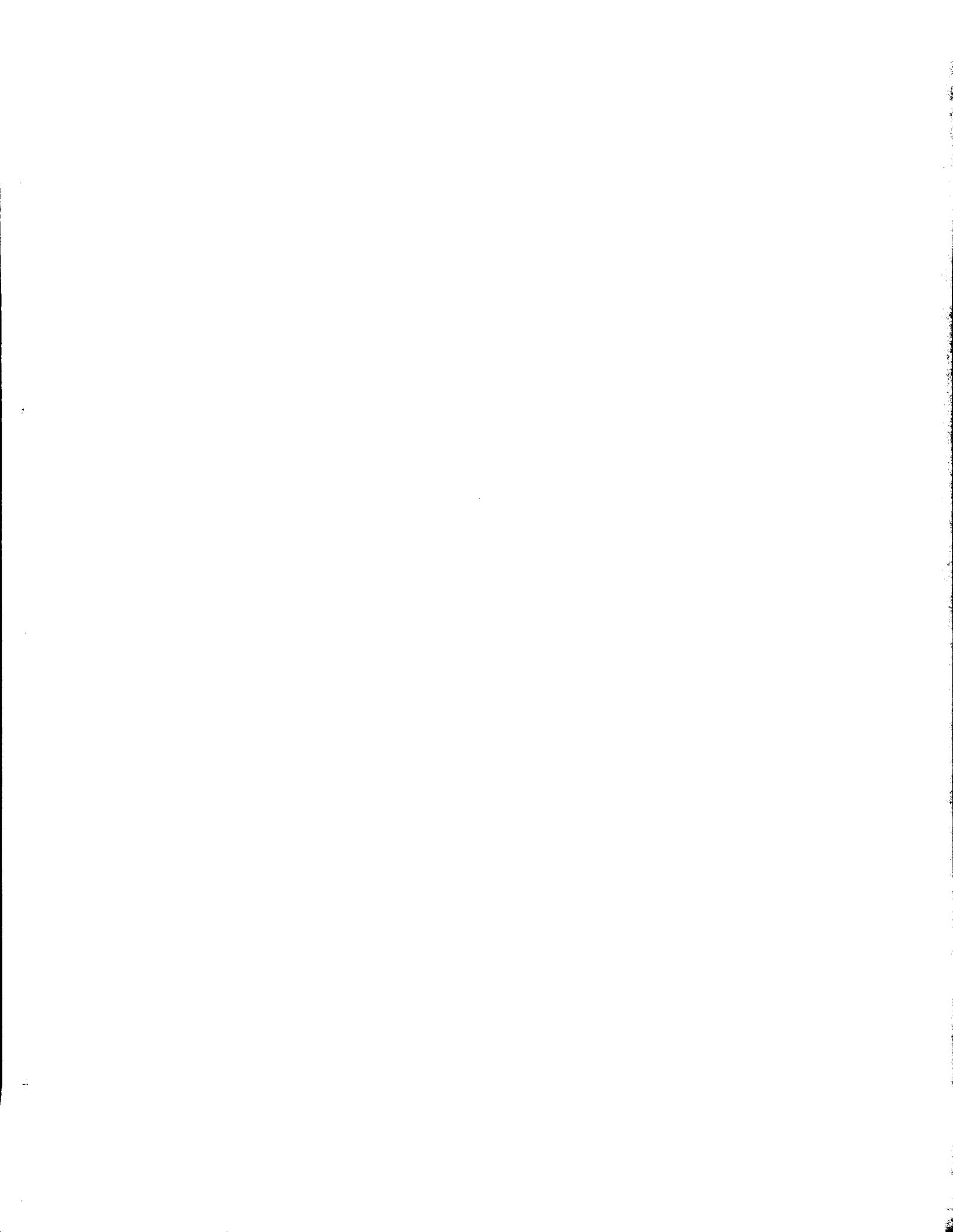
- Tacos • Enchiladas • Burritos
- Chile Rellanos • Chimichangas
- Flautas • Vegetarian Dishes • Tortas
- Tostados • Quesadillas • Nachos
- Menudo served Fri • Sat • Sun

YUCCA VALLEY 29 PALMS

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

Santana's Mexican Grill

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



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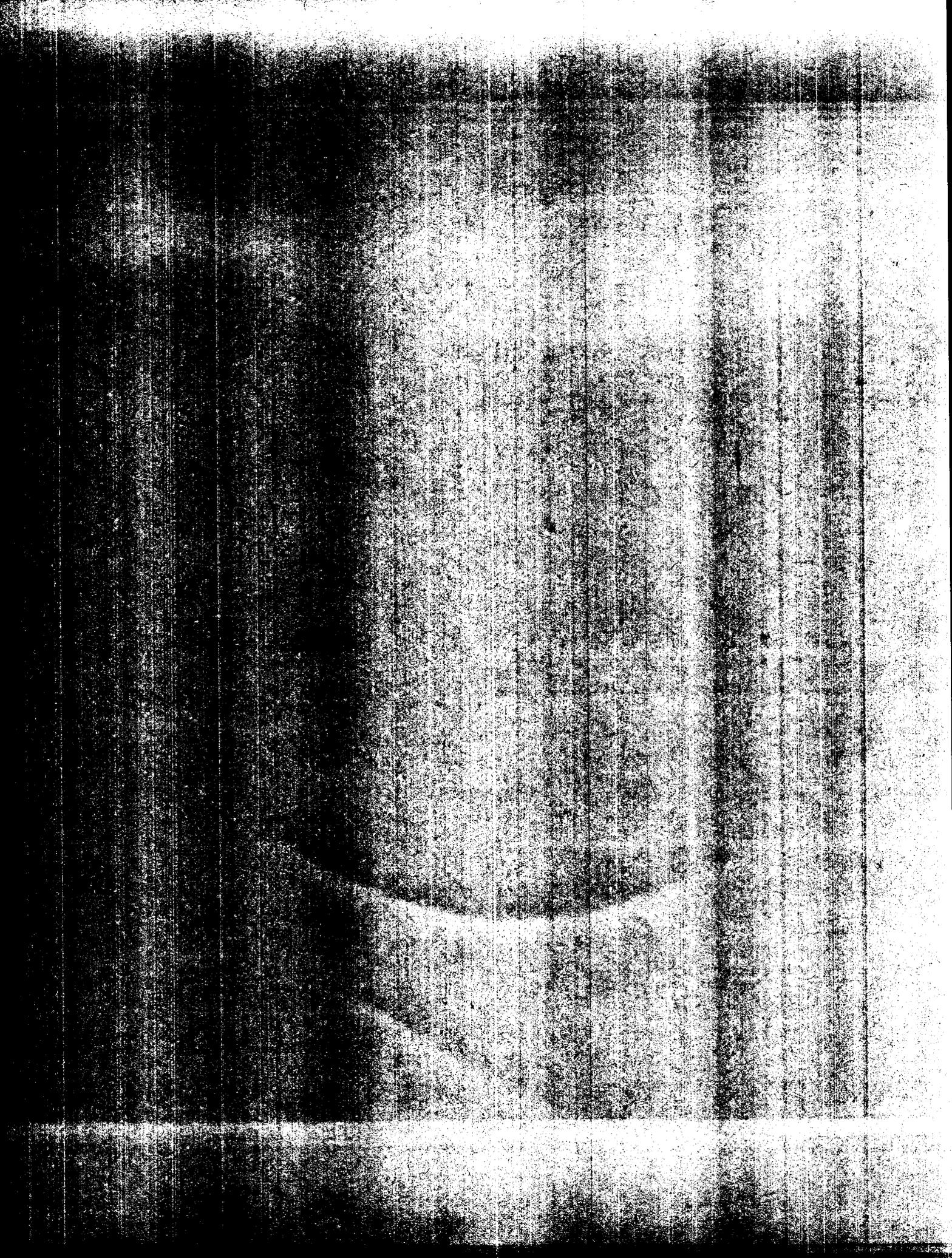
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Trial Deposition

Claudia Vallarta–Santana 1

(Cited as “Claudia VS 1”)

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 CLAUDIA VALLARTA-SANTANA

JANUARY 28, 2008



Reported By: Lexann Christy
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Re: **Arturo Santana Gallego v. Santana's Grill, Inc. (TTAB)/Santana's Grill, Inc.
v. Arturo Santana Lee et. al.**

BWB&O Client: Santana's Grill, Inc. & Claudia Vallarta-Santana

BWB&O File No.: 1174.272

Subject: **Witness Signatures & Corrections re: Testimony Depos**

Dear Ms. Armenta:

Please find below the following corrected and/or signed Testimony Transcripts with respect to the Trademark Trial and Appeal Board cancellation proceedings:

1. Claudia Vallarta's corrected pages, with initials, to her Testimony Transcript of January 28, 2008 and signature thereto (**the corrected version is to be submitted to the TTAB by Petitioner**). Recall, Claudia Vallarta made corrections to pages 13, 14, 17, 18 and 20. Please replace pages 13, 14, 17, 18 and 20 of Ms. Vallarta's January 28, 2008 Testimony Transcript with the enclosed corrected Testimony pages, Nos.

13, 14, 17, 18 and 20. In addition, please replace the unsigned signature page with Ms. Vallarta's enclosed signed signature page.

2. Claudia Vallarta's corrected page 29, with initials, and signed signature page to her Testimony Transcript of April 4, 2008 and signature thereto (**to be submitted to the TTAB by Registrant**).
3. Abelardo Santana's signature page to his Testimony Transcript of January 29, 2008 (**transcript with signed signature page to be submitted to the TTAB by Petitioner**). Please replace the unsigned signature page with the enclosed signed signature page.
4. Abelardo Santana's signature to his Testimony Transcript of April 3, 2008 (**transcript with signature page to be submitted to TTAB by Registrant**). Please replace the unsigned signature page with the enclosed signed signature page.
5. Maite Agahnia's signature to her Testimony Transcript of April 3, 2008 (**transcript with signature page to be submitted to TTAB by Registrant**).

As you are aware, in accord with the applicable rules, the party taking the testimony deposition is responsible for the filing of the same with the Board with a Notice of Filing served on opposing counsel. Of course, I will be submitting the testimony transcripts taken by Registrant, through counsel.

Furthermore, pursuant to Trademark Manual of Procedure, §703.01(n), a party who takes the testimony is responsible for having all errors in the transcript corrected prior to filing the same with the Board. If the testifying witness discovers an error or that other corrections are necessary to make the transcript an accurate record, the witness is to make a list of all such corrections, and forward the same to the deposition officer before whom the deposition was taken.¹ The officer, in turn, should correct the transcript by redoing the involved pages. Alternatively, if there are not many corrections, the witness may make the corrections by writing the correction above the original text that it corrects, and then initial the corrections.

As the corrections to the above testimony depositions are minimal, the corrections were made on the transcript with corresponding initials. **When submitting the transcripts of Claudia Vallarta and Abelardo Santana taken in January 2008, please remove the pages noted above and replace the same with the enclosed corrected pages and signature pages.**

¹ Noting that material changes are not permitted.

Cris Armenta, Esq.
BWB&O File No.: 1174.272
June 18, 2008
Page 3

Should you have any questions, please do not hesitate to let me know.

Very truly yours,

BREMER WHYTE BROWN & O'MEARA LLP

Michael A. Sandstrum

msandstrum@bremerandwhyte.com

MAS:

Enclosures: See Above

cc: Client (via email without enclosures)

transcript by redoing the involved pages. Alternatively, if there are not many corrections, the witness may make the corrections by writing the correction above the original text that it corrects, and then initial the corrections.

As the corrections to Claudia Santana's testimonial deposition are minor in nature, I will have Claudia Santana make the corrections by writing the same above the original text and have her initial the same, and then sign the testimony deposition. I will likely have her make the minor corrections when I take her testimony the first week of April 2008.

Claudia Santana's corrections to her testimonial deposition are as follows:

Page 11, line 14: Maite is the correct spelling, in lieu of "Mayte."

Page 13, line 20, Answer: Yes, I want to change the logos. Should say: went (in lieu of want).

Page 14, line 7, Answer: going to put the menus. Should say : going to put in the menus.

Page 17, line 3, Answer: that is, Arturo Castaneda, and he's the brother of Arturo. Should say: that is, Honorio Castaneda (in lieu of Arturo Castaneda)

Page 17, line 4, Answer: Arturo didn't have papers. Should say: Honorio (in lieu of Arturo) didn't have papers

Page 17, line ,6 Answer: Same as we signing for Arturo. Should say: signed (in lieu of signing)

Page 18, line 25 Answer: they start working with you. Should say: started (in lieu of start).

Page 20, line 17, Answer: him "Arturo, we're close the transaction . Should say: closing (in lieu of "close")

Claudia Vallarta-Santana

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

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

Deposition of CLAUDIA VALLARTA-SANTANA, taken on behalf of Petitioner, at Bremer Whyte Brown & O'Meara LLP, 550 West C Street, Suite 1450, San Diego, California, commencing at 9:52 a.m., on Monday, January 28, 2008, before Lexann Christy, CSR No. 7932.

Claudia Vallarta-Santana

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Also Present:

Abelardo Santana

Claudia Vallarta-Santana

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RE CROSS
CLAUDIA VALLARTA-SANTANA	4			

E X H I B I T S

PETITIONER'S EXHIBIT	DESCRIPTION	PAGE
1	Articles of Incorporation, 3 pages	32
2	Application for Service Mark Registration Under Section (a) Principal Register, 3 pages	33
3	In the United States Patent and Trademark Office Application for Service Mark Registration Under Section 1(a) Principal Register Mark Santana's Mexican Food...Es Muy Bueno, 3 pages	36

INSTRUCTIONS NOT TO ANSWER

PAGE LINE
21 17

Claudia Vallarta-Santana

1 SAN DIEGO, CALIFORNIA, MONDAY, JANUARY 28, 2008

2 9:52 a.m. - 10:52 a.m.

3
4 CLAUDIA VALLARTA-SANTANA,
5 called as a witness by and on behalf of the Petitioner, and
6 having been placed under oath by the Certified Shorthand
7 Reporter, was examined and testified as follows:

8
9 DIRECT EXAMINATION

10 BY MS. ARMENTA:

11 Q Could you state and spell your full name for the
12 record, please.

13 A Claudia Vallarta-Santana, C-l-a-u-d-i-a
14 V-a-l-l-a-r-t-a, dash, S-a-n-t-a-n-a.

15 Q Good morning, Ms. Vallarta-Santana. We've met
16 before. You know I'm Cris Armenta, the attorney for
17 petitioner Arturo Gallego, and we're here to take your
18 testimonial deposition in connection with three petitions
19 for cancellation.

20 Before we start, do you have any questions about
21 the process?

22 A No.

23 Q I'm sure you've had a chance to meet with your
24 attorney and you understand that the oath that you have
25 just taken, even though we're in a conference room, is the

Claudia Vallarta-Santana

1 same oath you would take if you were sitting in a court of
2 law, "yes"?

3 A I do.

4 Q How long have you been in the Mexican food
5 business?

6 A 18 years.

7 Q What year did you enter that business?

8 A At the end of 1991.

9 Q How did you enter that business?

10 A I married Abelardo, and then Abelardo purchased
11 the restaurant from his dad, and then I start to work at
12 the restaurant with my husband.

13 Q What year were you and Abelardo married?

14 A 1991.

15 Q What date?

16 A July 25th.

17 Q Are you still married to Abelardo?

18 A No.

19 Q When were you divorced?

20 A December 12, 2007.

21 Q Are you still in the Mexican food business?

22 A Yes.

23 Q When you say Abelardo purchased the restaurant
24 from his dad, are you referring to the restaurant located
25 at 1480 Rosecrans in San Diego?

Claudia Vallarta-Santana

1 A Yes, I am.

2 Q Prior to Abelardo's acquisition of any interest
3 in that restaurant, you understand that that restaurant was
4 owned by Arturo Santana Gallego, correct?

5 A Yes, I do.

6 Q And Arturo Santana Gallego is your former
7 father-in-law, your former husband's father, correct?

8 A Yes.

9 Q What was the name on the restaurant, I'm talking
10 about the 1480 Rosecrans location, before Abelardo acquired
11 an interest in it?

12 A Santana's Mexican Food.

13 MR. SANDSTRUM: Do you want for the record to call it
14 "the Rosecrans restaurant"?

15 MS. ARMENTA: That's fine, we'll call it "the
16 Rosecrans restaurant."

17 Q Is that located in San Diego County?

18 A Yes.

19 Q When you say Abelardo purchased the restaurant
20 from his dad, did you personally have any involvement in
21 negotiating the terms of the purchase of that restaurant?

22 A No, I didn't.

23 Q Did you personally have any involvement in
24 signing documents, or anything like that?

25 A Yes, I did.

Claudia Vallarta-Santana

1 Q What documents did you sign?

2 A I signed the first one when we acquire the
3 business and my former father-in-law was a partnership. It
4 was a three-way partnership with Abelardo, Arturo Santana
5 and me, and one month after he got dropped in the
6 partnership and the business license and that's when we
7 became solely owners.

8 Q When you say that you signed -- you acquired the
9 business, are you referring to the fictitious business name
10 statement?

11 A No. I'm referring to the business license. That
12 is the one that shows the partnership. The fictitious name
13 is --

14 Q So according to you, first you and Abelardo
15 together were added to ownership of the business; is that
16 right?

17 A Yes.

18 Q And then at some point after 1992 Mr. Santana
19 Gallego's name was removed from ownership of the business?

20 A Actually not even a month after.

21 Q Not even a month?

22 A Yes. I believe it's January 27, 1992.

23 Q Aside from the business license, did you
24 participate in the preparation or execution of any
25 documents related to the purchase of the business?

Claudia Vallarta-Santana

1 A All the fictitious name. I do all the documents
2 for the business.

3 Q In connection with doing all the documents for
4 the business, did you ever enter into any written agreement
5 with Arturo Santana Gallego with respect to the use of the
6 name Santana's Mexican Food in connection with restaurant
7 services?

8 A Okay. He resigned to the name under the
9 fictitious name. He sold the business to my husband. We
10 thought he had the goodwill, that the restaurant was one
11 hundred percent ours.

12 Q We're talking about the restaurant. My question
13 for you --

14 A The restaurant and the name.

15 Q My question for you -- so you believed that he
16 was giving you the name at that point; is that right?

17 A Yes.

18 Q Other than the business license or the fictitious
19 name statement, other than those, are there any other
20 documents that you're aware of that show the transfer of
21 the use of the name Santana's Mexican Food to you or to
22 your husband?

23 A No.

24 Q Now, in 1991 when you and Abelardo were added to
25 the ownership of the Rosecrans restaurant, was your

Claudia Vallarta-Santana

1 father-in-law the owner of another restaurant with the same
2 name located in Yucca Valley?

3 A Yes, he was.

4 Q What was the name of that restaurant?

5 A Santana's Mexican Food.

6 Q Now, when Arturo Santana Gallego's name was
7 removed from the Rosecrans restaurant on January 27, 1992,
8 did he sign any documents giving you the right to use
9 Santana's Mexican Food at the Yucca Valley restaurant?

10 A No.

11 Q As far as you know, after Arturo Santana Gallego
12 removed his name from the ownership interest from the
13 Rosecrans restaurant, did he continue to own the Yucca
14 Valley restaurant known as Santana's Mexican Food?

15 A Yes, he did.

16 Q Did you and your husband either directly or
17 through a corporation own the Rosecrans restaurant called
18 Santana's Mexican Food continuously from 1992 through 1998?

19 A Yes, we did.

20 Q And during those six years, isn't it true that
21 the Yucca Valley restaurant with the same name, Santana's
22 Mexican Food, continued to be in existence?

23 A Yes.

24 Q And you've only been to the Yucca Valley
25 restaurant once; is that right?

Claudia Vallarta-Santana

1 A No. I was there about 20 times, I mean -- once?
2 I said once Arturo Castaneda owned it, but before that we
3 used to bring merchandise almost every week when we had
4 another restaurant in Victorville.

5 Q What was your purpose in visiting the Yucca
6 Valley restaurant during the time you visited it?

7 MR. SANDSTRUM: Objection. Vague as to what -- the
8 first time she visited or any time?

9 BY MS. ARMENTA:

10 Q Did you always have the same purpose when you
11 visited the Yucca Valley restaurant?

12 A No.

13 Q How many times would you say you visited the
14 Yucca Valley restaurant?

15 A At least 20.

16 Q And during what period of time was that in terms
17 of years?

18 A Two, three years.

19 Q During what years was it?

20 A The first time I went it was like 1990. I wasn't
21 even married to Abelardo.

22 Q What was your purpose in visiting then in 1990?

23 A Just to come with him to deliver the merchandise
24 to his dad's restaurant. That's I know the thing that
25 Abelardo used to do for his dad while working at the

Claudia Vallarta-Santana

1 Rosecrans restaurant, deliver the merchandise to the other
2 restaurant every week.

3 Q So you accompanied Abelardo to supply the Yucca
4 Valley restaurant; is that right?

5 A Yes. And after 1990, around '93, when we open
6 the restaurant in Victorville, we open the middle of '92,
7 then I start -- in '93 I change the logo and I went over
8 there -- I remember going over there and showing the new
9 logo and helping with the new menus.

10 Q Who did you help?

11 A Blanca and Cervando Padilla.

12 Q Who else participated in creating the logo at
13 that time?

14 A My friend Mayte Agahnia.

15 Q Do you remember when I took your deposition in
16 this case in January 2005, January 20, 2005, that we sat
17 and I asked you questions like this?

18 A Yes, I do remember, but it's three years ago.

19 Q Do you remember -- have you reviewed your
20 deposition transcript recently?

21 A No.

22 Q Well, let me just read you this and see if this
23 sounds familiar to you.

24 "QUESTION: What was the purpose in visiting the
25 Yucca Valley restaurant when Tia Blanca and Tio Cervando

Claudia Vallarta-Santana

1 were operating the restaurant?

2 "ANSWER: I accompanied Abelardo to supply.

3 "QUESTION: Any other purpose?

4 "ANSWER: Not at all."

5 A Okay, first of all, I can go -- I hadn't seen my
6 father-in-law. I hadn't seen my brother-in-law for about
7 two years then. We were all in the same room. I was
8 having a hard time in my marriage, and I was really
9 nervous. Those are all the answers. I wanted to get out
10 of there as soon as possible. Now I'm calm and I can think
11 straight, so I'm answering what it is. I'm not changing my
12 answer. I'm just saying what it is. When you're under
13 stress, you just want to get out of there as soon as
14 possible.

15 Q Do you remember that I asked you is there any
16 reason you cannot testify fully and honestly today, and you
17 answered no reason at all?

18 A Yes, I do remember.

19 Q But now you're telling me there were reasons you
20 couldn't answer fully and honestly that day?

21 A No. I'm just saying I was stressed.

22 MR. SANDSTRUM: I want to object. That's
23 argumentative.

24 THE WITNESS: When you are stressed, your head --

25 BY MS. ARMENTA:

Claudia Vallarta-Santana

1 Q Are you stressed today?

2 A I'm fine.

3 Q Are you able to fully and truthfully answer
4 today?

5 A Yes.

6 Q Were you able to fully and truthfully answer in
7 2005 when your deposition was taken?

8 A Yes, I suppose I did. It's three years ago.

9 MR. SANDSTRUM: I think the witness is trying to get
10 across that the stress that she was under was affecting her
11 memory and recall of events. That's what I think you're
12 talking about.

13 THE WITNESS: I was going through a rough patch in
14 every single aspect of my life.

15 MS. ARMENTA: I move to strike counsel's speech.

16 Q So you're telling me that you visited the Yucca
17 Valley restaurant as early as 1990, and then you're telling
18 me that you visited also around 1993 in connection with
19 creation of the logo; is that right?

20 A Yes. We want to change logos.

21 Q Any other purpose for your visits to the Yucca
22 Valley restaurant during your lifetime?

23 A Just to go and help my husband to bring that
24 merchandise.

25 Q I want to make sure we're clear.

Claudia Vallarta-Santana

1 One was to supply merchandise to accompany your
2 husband?

3 A Yes.

4 Q One was to assist in creating the logo?

5 A Okay, not assist in creating the logo. I created
6 the logo in San Diego, just to tell them how they were
7 going to put the menus.

8 Q Any other purposes than related to supplying
9 merchandise or creating the logo? Did you ever visit Yucca
10 Valley ever for any other purpose?

11 A No.

12 MR. SANDSTRUM: I think that misstates her testimony.
13 She was there visiting relatives, as well, so when you say
14 any other purpose --

15 MS. ARMENTA: I'm not misstating her testimony. She's
16 testifying. Let me ask the question again.

17 Q Did you visit the restaurant for any other
18 purpose other than assisting -- accompanying your husband
19 to supply or working in connection with the logo? Any
20 other purposes?

21 A Accompany my husband to see his relatives and to
22 bring the merchandise.

23 Q Any other purposes, other than those you've
24 mentioned already?

25 A No.

Claudia Vallarta-Santana

1 Q So in 2001 when you signed certain declarations
2 in connection with trademark applications, you were aware
3 at that time of the existence of the restaurant called
4 Santana's Mexican Food in Yucca Valley, right?

5 A Yes, I was.

6 Q And you were aware at that time that someone
7 other than you, your husband or your corporation, Santana's
8 Grill, owned the Yucca Valley restaurant called Santana's
9 Mexican Food, correct?

10 A Owned the property. We didn't know that my
11 former father-in-law transferred the name along with the
12 property because he never care about the name.

13 MS. ARMENTA: I move to strike the answer as
14 nonresponsive.

15 Ms. Reporter, could you please read back the
16 question.

17 (The record was read.)

18 THE WITNESS: Yes. And, like I said, they own the
19 property, not the name. It was a sale of the property. It
20 wasn't a sale of the name.

21 BY MS. ARMENTA:

22 Q When you say it was the sale of the property, do
23 you mean it was a sale of the land?

24 A Yes. My father-in-law owned Yucca Valley, and he
25 didn't know what to do with Yucca Valley.

Claudia Vallarta-Santana

1 Q Did you speak with your father-in-law about that?

2 A My husband did.

3 Q Do you have firsthand knowledge of what you're
4 telling me, or are you just reporting to me what your
5 husband told you?

6 A No. I have firsthand knowledge.

7 Q What conversations did you have with Mr. Santana
8 Gallego about this?

9 A I was in the conversation. It wasn't a direct
10 conversation, just he and me, it was like a family thing,
11 like in a family thing we let everybody know we were
12 registering the name, doing the trademark, and nobody
13 opposed.

14 MS. ARMENTA: I move to strike that answer again as
15 nonresponsive.

16 The problem is -- I know you have a story you
17 want to tell, but the problem is if you start to tell it
18 and it doesn't respond to the question, evidence will not
19 come in, so let me try asking the question again.

20 Ms. Reporter, could you read back the question,
21 please.

22 (The record was read.)

23 THE WITNESS: He came to Abelardo and told him he
24 didn't have anybody else to run Yucca Valley, Abelardo
25 suggested this person that work for us, Arturo Castaneda.

Claudia Vallarta-Santana

1 In between, before interviewing Arturo Castaneda,
2 he went to our right hand and wanted to take him from us,
3 that is, Arturo Castaneda, and he's the brother of Arturo.

4 Arturo didn't have papers at the time because we
5 were doing his papers. He was under our thing to get his
6 papers for immigration. Same as we signing for Arturo
7 Castaneda to get his papers, we are signers on those papers
8 too.

9 So then he took Arturo Castaneda and instead of
10 renting the restaurant, he sold it to him when it was
11 really clear, plain and written in our minds, not written
12 in paper, we told him rent the restaurant to this person,
13 do not sell it. I mean, he can run it. If you want not to
14 have any more problems, Dad, do this, and he did completely
15 the opposite. He sold the restaurant to Arturo Castaneda.

16 Q So Mr. Arturo Santana Gallego --

17 A He sold the restaurant. He didn't know what to
18 do with the property.

19 Q So he decided what to do, notwithstanding what
20 you wanted him to do; is that right?

21 A No. He asked us for our advice.

22 Q And he ignored your advice, right?

23 A Yes.

24 Q And your advice to him was that he maintain
25 ownership of the restaurant; is that right?

Claudia Vallarta-Santana

1 A Our advice, yes.

2 Q And he ignored your advice there, right, as far
3 as you're concerned?

4 A He said he was going to do that, that it was
5 great and blah, blah, blah, and next thing we know is that
6 he sold the restaurant.

7 Q Did you have any specific conversations with
8 Arturo Castaneda concerning the use of the name Santana's
9 Mexican Food at the Yucca Valley restaurant?

10 A No.

11 Q Now, in 1998 you and your husband formed a
12 corporation called Santanas Grill, Inc., right?

13 A Yes.

14 Q And when you went to incorporate the name of that
15 business, you chose Santanas Grill as opposed to Santana's
16 Mexican Grill, right?

17 A Yes. I wanted to make it shorter.

18 Q Isn't it true that the reason you didn't use
19 Santana's Mexican Grill is because your brother-in-law,
20 Arturo Santana Lee, had already taken that name and formed
21 a corporation called Santana's Mexican Grill that you owned
22 previously?

23 A Okay. Santana's Mexican Grill was created under
24 your advice in 2004 after we had been in business. When
25 they start working with you, you recommended for them to do

Claudia Vallarta-Santana

1 a corporation, and you can go back on records, and it's at
2 least 2003 that he created that corporation, not before.

3 Arturo Santana Lee didn't do any paperwork,
4 didn't even know how to do the paperwork. I did all that
5 for him when we open the El Cajon location, every single
6 document. He was in my insurance, as I stated before
7 previous times. We were cosign partners for his lease for
8 10 years. That lease just expired on December 2007,
9 10 years.

10 Why would we give somebody our signature, our
11 credit, our everything if we didn't trust or believe he was
12 going to do the same thing?

13 Q When you say "do the same thing," you mean run
14 the restaurant in the same way you and Abelardo were
15 running your restaurant?

16 A Exactly. I mean, be loyal.

17 Q So this lawsuit is really about the fact he
18 wasn't loyal?

19 MR. SANDSTRUM: Misstates her testimony.

20 You need to answer the question. You're going
21 off on a narrative, so just if she asks a question that
22 calls for "yes," or "no," say, "yes" or "no." Just make
23 sure you answer the question; otherwise, we'll be here
24 quite a while.

25 BY MS. ARMENTA:

Claudia Vallarta-Santana

1 Q Tell me what you mean about loyalty again.

2 A What I do mean about loyalty?

3 Q Yes.

4 A I mean that Arturo came to us in 1997 with zero
5 money on his pocket because he was working with his dad for
6 I don't know how long down in Mexico at a gravel plant, I
7 don't know how you pronounce it, and he was tired of his
8 dad not paying him anything, tired of his dad controlling
9 his life, and he asked us for our help. Okay.

10 Arturo run to -- as far as my knowledge, because
11 when I start dating Abelardo Arturo had Yucca Valley.
12 Yucca Valley almost went bankrupt because Arturo didn't
13 even know how to run it.

14 And then they moved down to Tecate, and then the
15 wife lost the papers and then she couldn't cross back, so
16 Arturo comes in 1997 and ask us for our help, and we tell
17 him "Arturo, we're close the transaction for Midway
18 location, we're buying the property, this is the first
19 property we're going to buy, it's going to be named
20 Santana's Mexican Grill. We're opening in 19- -- I mean,
21 in the middle of 1998 because we need to remodel it. Why
22 don't you start yours in the Santana's Mexican Grill since
23 you're going to open first, and that's the route we're
24 going to change all the restaurants to be." Okay. Even
25 the insurance is under Santana's Mexican Grill.

Claudia Vallarta-Santana

1 Q Did you ever execute any documents between you
2 and your husband or Santanas Grill, Inc. with Arturo
3 Santana Lee with respect to the use of the name Santana's
4 Mexican Grill at the Broadway location?

5 A We didn't have to. It is his brother. You trust
6 brothers. That's where loyalty comes in.

7 Q Just as Arturo Santana Lee trusted his brother
8 that his brother wouldn't use him for using his own name?

9 MR. SANDSTRUM: I'm going to object. That's
10 argumentative.

11 THE WITNESS: No. Just as --

12 MR. SANDSTRUM: No.

13 THE WITNESS: You can strike, but I need to answer.

14 MR. SANDSTRUM: No, you don't need to answer.

15 BY MS. ARMENTA:

16 Q What would your answer be to that question?

17 MR. SANDSTRUM: I'm instructing you not to answer.

18 Ask a non-argumentative question.

19 BY MS. ARMENTA:

20 Q Isn't it true in 1997 your brother-in-law, Arturo
21 Santana Lee, began operating the restaurant located at
22 411 Broadway in El Cajon and it was called Santana's
23 Mexican Grill?

24 A Yes, it was.

25 Q And at the time your restaurant at Rosecrans was

Claudia Vallarta-Santana

1 called Santana's Mexican Food, right?

2 A Yes, it is.

3 Q And that's the same name that the Yucca Valley
4 restaurant had at that time; is that correct?

5 A Yes.

6 Q And the Rosecrans location did not change its
7 name to Santana's Mexican Grill until 1998; is that right?

8 A Actually, that restaurant is still Santana's
9 Mexican Food.

10 Q Which of your restaurants are still Santana's
11 Mexican Food?

12 A That one and Morena Boulevard. And I think the
13 Garnett location has Santana's Mexican Food signs.

14 Q So you were telling me before that you had told
15 Arturo Santana Lee that the plan was to run all of the
16 restaurants as Santana's Mexican Grill; is that right?

17 A That we were trying to do the transition.

18 Q And yet you still have Morena Boulevard,
19 Rosecrans and Garnett that are still called Santana's
20 Mexican Food; is that right?

21 A Yes, because we use both of them. Some menus say
22 this and some menus say that, but what matters is the logo.
23 What you see is the logo and what comes inside of that.
24 Nobody reads the end of Santana's Mexican Grill. And I
25 learned that the hard way when I try to do some kind of

Claudia Vallarta-Santana

1 advertisement using the logo. Nobody reads what's inside
2 when I change the inside.

3 Q When did you open the Morena Boulevard location?

4 A June 1993.

5 Q So you opened that as Santana's Mexican Food?

6 A Yes.

7 Q And that has been Santana's Mexican Food
8 continuously from June 1990 through to the present?

9 A On the outside logos, yes.

10 Q And the Rosecrans location has been Santana's
11 Mexican Food continuously until the present?

12 A Yes.

13 Q When did you open the Garnett location?

14 A 2004.

15 Q And you've used Santana's Mexican Food in
16 connection with that location from 2004 until the present?

17 A Yes.

18 Q Which of your restaurants have the name Santana's
19 Mexican Grill on it?

20 A Midway location, San Marcos location, Washington
21 location.

22 Q Is it correct that you have six restaurants
23 currently?

24 A Yes.

25 Q Are all six restaurants owned by Santanas Grill,

Claudia Vallarta-Santana

1 Inc., the corporation?

2 A In a way, yes.

3 Q Explain what you mean by "in a way."

4 A With the separation, Abelardo gets a percentage
5 and I get another percentage.

6 Q When you say "a percentage," you mean a
7 percentage of the restaurant or percentage of shares of
8 Santanas Grill, Inc.?

9 A Percentage -- you will call percentage of sales
10 of the restaurant.

11 Q Who currently owns Santanas Grill, Inc.

12 A Abelardo Santana Lee.

13 Q Do you continue to be an officer of Santanas
14 Grill, Inc.?

15 A No.

16 Q And did your -- is your absence now as an officer
17 of Santanas Grill, Inc. or of ownership of Santanas Grill
18 due to the arrangements you made in connection with your
19 divorce?

20 A I'm not absent. I still do all the paperwork and
21 everything I was doing prior, so it doesn't affect.

22 Q Are you still an officer of Santanas Grill?

23 A No.

24 Q Are you still a shareholder of Santanas Grill?

25 A No.

Claudia Vallarta-Santana

1 Q Did you cease becoming an officer in connection
2 with the arrangements you made with respect to your
3 divorce?

4 A Yes.

5 Q Did you cease becoming a shareholder in
6 connection with the arrangements you made in connection
7 with your divorce?

8 A Yes.

9 Q You are paid a percentage of the sales of
10 Santanas Grill, Inc.; is that correct?

11 A No. I am paid -- yes.

12 MS. ARMENTA: Could you read back the question and
13 let's have her reanswer it.

14 (The record was read.)

15 MR. SANDSTRUM: Asked and answered, but go ahead.

16 MS. ARMENTA: She answered "no" and then she answered
17 "yes," so I want to make sure I have a clear record.

18 THE WITNESS: Yes.

19 BY MS. ARMENTA:

20 Q Of your seven restaurants -- I'm sorry, of your
21 six restaurants do all of them use the same menus?

22 A Yes.

23 Q Do they use the same recipes?

24 A Yes.

25 Q Do they use the same colors?

Claudia Vallarta-Santana

1 A Yes.

2 Q Do they use the same signage?

3 A Yes, with the logo.

4 Q Do they use the same advertisement?

5 A Yes.

6 Q Now, you said that they use the same signage, but
7 we talked before that three of the restaurants are called
8 Santana's Mexican Food and three of them are called
9 Santana's Mexican Grill.

10 What signs do they use that are the same?

11 A That's what I said, yes, with the logo. I just
12 explained to you in my prior answer the logo is what
13 matters. The logo says "Santana's Mexican Grill" or
14 "Mexican Food," either. The menu say the grill. The
15 outside can say the food, but when you look at it, it says
16 the same. It is the Santana's and it is the logo.

17 Sometimes we use the "Es Muy Bueno," sometimes we
18 use the "Home of Famous California Burrito," but as a
19 package it's Santana's and it always will have the same
20 logo.

21 Q So is it true then that in your experience that
22 both you and the public use the term Santana's Mexican Food
23 and Santana's Mexican Grill interchangeably?

24 A Actually, the public says "Santana's" only. They
25 don't even go to the "Mexican Food" or to the "Mexican

Claudia Vallarta-Santana

1 Grill." They just use Santana's.

2 Q So it's fair to say that in connection with your
3 restaurants, Santana's Mexican Food and Santana's Mexican
4 Grill, that your view is the public focuses on the fact
5 that it's Santana's; is that right?

6 A Yes.

7 Q So if someone else were to use the words
8 "Santana's Mexican Food" or "Santana's Mexican Grill," it's
9 your position there would be confusion between the
10 customers?

11 A Yes, and especially if they use our logo.

12 Q And you've actually seen consumers be confused
13 about who owns which restaurant; is that right?

14 A Yes, I have.

15 Q In 1997 after Arturo Santana Lee opened the
16 El Cajon restaurant, did he at that point file a fictitious
17 business name statement for Santana's Mexican Grill in
18 San Diego, to your knowledge, at that location?

19 A Yes. I fill out that application for him like
20 all the other paperwork.

21 Q Did you put your name on it?

22 A No. I put his name on it.

23 Q Because he owned that restaurant, right?

24 A Yes, he owned that restaurant, and he wouldn't
25 have been able to open that restaurant if it wasn't for me

Claudia Vallarta-Santana

1 and my husband because they were not even leasing the
2 property to him.

3 Q Whether you helped him or not, he was the owner
4 of that restaurant, right?

5 A Yes.

6 Q You understand that you submitted declarations to
7 the United States Patent and Trademark Office when you
8 applied for three different trademarks, right?

9 A Yes, I do.

10 Q And you understand you signed those declarations
11 under the penalty of fine or imprisonment, right?

12 A Yes, I do.

13 Q Before you executed those declarations in
14 connection with the applications for trademarks, you were
15 Santana's Grill's vice president, correct?

16 A Yes.

17 Q You were, in fact, an officer of the corporation;
18 is that correct?

19 A Yes.

20 Q And you had access to the books and papers of
21 Santanas Grill before you made the statements set forth in
22 the declaration?

23 A Yes.

24 Q And you were aware that Santanas Grill, Inc., the
25 applicant, was not even formed until April 3rd, 1998,

Claudia Vallarta-Santana

1 correct?

2 A Yes.

3 Q And, yet, you indicated in your declaration a
4 date earlier -- a date of earlier use by Santanas Grill
5 prior to 1998, didn't you?

6 A Yes.

7 Q And then later you submitted a corrective
8 declaration; is that right?

9 A That was for the logo. That was for the logo
10 declaration because I said the first use and I put in all
11 of them 1988, and then I mean -- it took me about seven
12 years to find who could register the mark. I didn't know
13 it was called intellectual law. It took me a long time to
14 find it, so in all those seven years everybody knew we were
15 trying to do these register of the mark because we kept
16 asking friends and we kept asking and saying do you know
17 how to do this thing. It's not like you could Google
18 10 years ago. Okay? I'm giving you facts, and it's the
19 truth.

20 So the answer is yes, I put 1988 because I
21 thought it was for the whole thing since the business is
22 started.

23 MR. SANDSTRUM: Just to clarify the record, I'm
24 somewhat unclear as to what declaration you're talking
25 about with respect to what --

Claudia Vallarta-Santana

1 MS. ARMENTA: Apparently the witness isn't.

2 THE WITNESS: There are three of them.

3 BY MS. ARMENTA:

4 Q Let's move on, and then I'll show you the
5 declarations.

6 Now, at the time that you applied for federal
7 trademark protection, you knew of the existence of the
8 restaurant located at 411 Broadway in El Cajon called
9 Santana's Mexican Grill, right?

10 A Of course, I did. I set it up.

11 Q So you were aware of it both in 1997 through 2001
12 when you submitted the trademark applications, correct?

13 A Yes.

14 Q And you were aware that Arturo Santana Lee's
15 restaurant that he owned in El Cajon opened before the
16 Rosecrans location changed its name -- actually, the
17 Rosecrans location never changed its name, did it?

18 A Never changed the name.

19 Q What is the first restaurant you opened that used
20 Santana's Mexican Grill?

21 A Midway. First time I used Santana's Mexican
22 Grill is when I set up the insurance for Arturo that I'm
23 under that insurance.

24 Q Let's talk about the restaurants you own.

25 When was the first restaurant you own called

Claudia Vallarta-Santana

1 Santana's Mexican Grill opened?

2 A Midway, July 1998.

3 Q 19-?

4 A '98. That's where the loyalty comes in.

5 MR. SANDSTRUM: Let her ask her questions.

6 THE WITNESS: I know, but...

7 BY MS. ARMENTA:

8 Q How does the loyalty come in there?

9 A How does the loyalty come in?

10 Q Sure.

11 A When you don't have any money, you say you're
12 going to do everything that everybody says, and then they
13 put you on a pedestal and they tell you you're the best,
14 blah, blah, blah. Soon as you have money, I'm not doing
15 anything that you say. I don't care what you say, stealing
16 all our employees, changing the menus, changing the prices.
17 It's like I don't care, I already have money, now I can do
18 whatever.

19 Q So the first time that you or your husband or
20 Santanas Grill, Inc. used the words "Santana's Mexican
21 Grill" in connection with the restaurant owned by Santana's
22 Grill, Inc. was July 1998 at the Midway location?

23 A Yes.

24 MS. ARMENTA: Let's take a little break. I'm just
25 going to pull out the declarations and we'll go over those

Claudia Vallarta-Santana

1 and be done in fairly short order.

2 (A recess was taken.)

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

4 Q I'm going to hand you a document which I'll ask
5 the court reporter to mark as Exhibit 1. It's a three-page
6 document which was produced by Santanas Grill, numbered
7 SG00097 through SG00099.

8 MR. SANDSTRUM: Just to make it clear, you might want
9 to mark it Petitioner's Exhibit 1.

10 MS. ARMENTA: Petitioner's Exhibit 1.

11 (Exhibit P-1 was marked for identification.)

12 BY MS. ARMENTA:

13 Q You said before you're familiar with all the
14 books and records in connection with Santanas Grill, Inc.

15 A Yes. This is the incorporation, May 3 --
16 April 3rd, without looking at it.

17 MR. SANDSTRUM: Just, again, to make the record clear,
18 when we're talking about "this," we're talking about
19 Petitioner's Exhibit 1. Somebody is going to be reading
20 this.

21 THE WITNESS: Yes, those are my incorporation records.

22 BY MS. ARMENTA:

23 Q Is that the first date on which Santana's Grill,
24 Inc. was incorporated, April 3rd, 1998?

25 A Yes.

Claudia Vallarta-Santana

1 Q Now, before we were talking about the first use
2 by you at a restaurant that you owned at the Midway
3 location.

4 A Do you remember that?

5 A Yes.

6 Q And that was July 1998; is that correct?

7 A Yes.

8 MS. ARMENTA: Let's mark as Petitioner's Exhibit 2 a
9 three-page document numbered SG00094 through -00096.

10 (Exhibit P-2 was marked for identification.)

11 BY MS. ARMENTA:

12 Q Please look at that document and tell me if you
13 recognize that.

14 A Yes.

15 Q What is it?

16 A It's a trademark registration.

17 Q This is the declaration that you signed in
18 connection with the application for the mark Santana's
19 Mexican Grill, correct?

20 A Yes.

21 Q And if I could direct your attention to the first
22 page -- is that a true and correct copy of your signature
23 on the last page of that document?

24 A Yes.

25 Q Let's direct your attention to the first page

Claudia Vallarta-Santana

1 midway through the page where it says the service mark was
2 first used in connection with the services on or before
3 July 1998.

4 Do you see that?

5 A Yes.

6 Q Was that in reference to the Midway location's
7 use of Santana's Mexican Grill?

8 A It was reference to the Midway location, along
9 with the corporation.

10 Q Was it in reference to anything else?

11 A It was along with the corporation. I mean,
12 that's where I got the confusion with the lawyer, that this
13 is like when do I put, do I put when it actually started or
14 when the corporation, and she answered me when the
15 corporation started using the mark.

16 Q So what was the actual date of first use of the
17 mark by you?

18 A By me? July 1998 as to the business in Mexican
19 Food. As before, since about November 1997, but trademark
20 sees when you are in business and when you're actually
21 using the mark.

22 Q Did you disclose to the trademark office the
23 prior use by Arturo Santana Lee at the El Cajon restaurant?

24 A I disclose it to my lawyer, and I told her how
25 everything was set up.

Claudia Vallarta-Santana

1 Q When you signed this declaration, did you
2 disclose to the trademark office the prior use by Arturo
3 Santana Lee at 411 Broadway in El Cajon?

4 MR. SANDSTRUM: I'm just going to object. The
5 document speaks for itself what it says and doesn't say.

6 BY MS. ARMENTA:

7 Q Is there any other document that you're aware on
8 which you disclosed the prior use by Arturo Santana Lee at
9 the El Cajon restaurant?

10 A What kind of document?

11 Q Did you write a letter to the trademark office?
12 Did you send them another declaration in connection with
13 this mark?

14 A That's why I hired an attorney.

15 Q That's not my question though.

16 A I'm sorry, that's why I hired an attorney.

17 Q Are you aware --

18 A No, I'm not aware.

19 Q -- of any other document in which you disclosed
20 the prior use of the mark Santana's Mexican Grill by Arturo
21 Santana Lee at the El Cajon restaurant?

22 A No.

23 MS. ARMENTA: Let's mark as Petitioner's No. 3 a
24 document entitled "Application for Service Mark
25 Registration for Santana's Mexican Food...Es Muy Bueno,"

Claudia Vallarta-Santana

1 and we'll call this Petitioner's Exhibit 3.

2 (Exhibit P-3 was marked for identification.)

3 BY MS. ARMENTA:

4 Q Is your signature located on the last page of
5 this document?

6 A Yes.

7 Q Did you sign this document on or about
8 November 27, 2001?

9 A Yes.

10 Q At the time you signed it, did you understand
11 that any false statement is punishable by fine,
12 imprisonment or both?

13 A Yes.

14 Q Now, directing your attention to the first page,
15 you indicated that the mark was used in connection with the
16 services on or about 1988; is that correct?

17 A Correct.

18 Q And the applicant who was applying for the mark
19 in this case was Santanas Grill, Inc., right?

20 A Correct.

21 Q Now, was Santana's Gill, Inc. in existence in
22 1988?

23 A No, it wasn't.

24 Q Santana's Grill, Inc. didn't come into existence
25 until --

Claudia Vallarta-Santana

1 A 1998, 10 years after.

2 Q 10 years later. Did you disclose to the
3 trademark office in this document or any other document
4 that at the time in 1988 Santanas Grill, Inc. was not in
5 existence?

6 MR. SANDSTRUM: I'm just going to object. The
7 document, Petitioner's Exhibit No. 3, speaks for itself and
8 is a compound question.

9 BY MS. ARMENTA:

10 Q Did you disclose to the trademark office on any
11 document, other than this one, that Santanas Grill Inc. was
12 not in existence until 10 years later after the date of use
13 claimed on this application?

14 MR. SANDSTRUM: Other than the motions that have been
15 filed?

16 MS. ARMENTA: Yes, other than the motions that have
17 been filed. That was, of course, after the registration
18 became complete, yes.

19 THE WITNESS: No. Because here it says when is the
20 first time the mark was used, and it was used in 1988 at
21 the Rosecrans location. This is under Santana's Mexican
22 Food Es Muy Bueno. My husband worked that location since
23 it opened, 1987.

24 BY MS. ARMENTA:

25 Q Did you have personal knowledge of the use of the

Claudia Vallarta-Santana

1 mark "Santana's Mexican Food Es Muy Bueno" at the Rosecrans
2 location as of 1988?

3 A Yes.

4 Q When was the first time you visited that
5 restaurant?

6 A 1989.

7 Q So did you have personal knowledge of the use of
8 that mark in 1988?

9 A No. I mean, from what I hear from my husband.

10 Q So you heard that from your husband?

11 A Yes.

12 Q But you don't have any personal knowledge of what
13 the restaurant was using in 1988?

14 A I have all the paperwork from the original
15 opening of that restaurant. Okay? And since we acquired
16 the name and the mark with the fictitious name and with the
17 sale of the Rosecrans location and that is the first
18 location that used that mark, that's why I refer to it as
19 1988.

20 Q Do you have any documents that talk about the use
21 or transfer of a trademark to you by Arturo Santana
22 Gallego?

23 A I don't think Arturo Santana Gallego even thought
24 about a trademark when he first sold us the restaurant, not
25 even in his head in his mind or in his plans.

Claudia Vallarta-Santana

1 Q When he sold you that restaurant or you say he
2 sold you the restaurant, did he continue to use the words
3 "Santana's Mexican Food Es Muy Bueno" in association with
4 the Yucca Valley restaurant?

5 A Yes, he did.

6 Q Did you ever ask him to stop?

7 A No. That was his location. That was his
8 location, but it was implied that San Diego County at that
9 time it was ours and we could do whatever we wanted with
10 the name, okay, even register it. He didn't oppose when I
11 told him I was going to register it. He knew.

12 Q Are you familiar with a restaurant owned by Pedro
13 Santana?

14 A Yes, I am.

15 Q What is it called?

16 A Burrito Santana.

17 Q Where is it located?

18 A Somewhere in El Cajon.

19 Q Have you ever been there?

20 A No.

21 Q How are you familiar?

22 A Because I get bills from all my vendors that
23 belong to him because he's registered under Santana's
24 Mexican Food, even his phone bill, so they call me and tell
25 me you owe this and that, and that's not mine, what

Claudia Vallarta-Santana

1 location is it.

2 Q So there's a mix-up in the phone bill --

3 A Not just the phone bill, also the vendors.

4 Q But you've never personally been to the
5 restaurant?

6 A No.

7 Q Do you know what year that restaurant opened?

8 A No.

9 Q Have you ever had occasion to review the menus,
10 recipes or logos used in association with Burrito Santana?

11 A Probably have seen them, but no.

12 Q Prior to the time that you signed the
13 declarations in connection with your applications for
14 trademarks by Santana's Grill, were you aware of the
15 existence of Burrito Santana?

16 A It wasn't opened then. I know it open after
17 2003, I think.

18 Q Are you aware of any other restaurants that have
19 the name "Santana's" on it in association with Mexican food
20 or food services?

21 A Yes.

22 Q Which ones?

23 A There is another one in Tennessee. There's
24 another one in Arizona. And we cannot do anything because
25 we were trying to regain what is rightfully ours. And how

Claudia Vallarta-Santana

1 do I know the one in Arizona? You mention it. And the one
2 in Tennessee, a loyal customer from our Rosecrans location
3 call me and ask me if it was ours and faxed me the menu and
4 we even called him.

5 Q When did you receive the fax of that menu?

6 A 2003, 2004. I don't know.

7 Q What actions are you taking in connection with
8 finding out that that restaurant existed?

9 A It is still. I Google it.

10 Q Have you asked them to stop using the name?

11 A We called.

12 Q Have you asked them to stop using the name?

13 A I can't until this trademark is done.

14 Q Have you asked them to stop using the name?

15 A No. I can't.

16 MS. ARMENTA: I have no further questions.

17 Do you have any questions?

18 MR. SANDSTRUM: No.

19 MS. ARMENTA: I'm done with her.

20 MR. SANDSTRUM: Are you sure?

21 MS. ARMENTA: Yes.

22 MR. SANDSTRUM: Let's go off the record real quick.

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

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

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

3 How long will it take to prepare? Not long.

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

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

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

11 Let's go off the record.

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

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

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

24 (Whereupon, the proceedings concluded
25 at 10:52 a.m.)

Claudia Vallarta-Santana

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Declaration Under Penalty of Perjury

I, CLAUDIA VALLARTA-SANTANA, 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)

CLAUDIA VALLARTA-SANTANA

Claudia Vallarta-Santana

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF ORANGE)

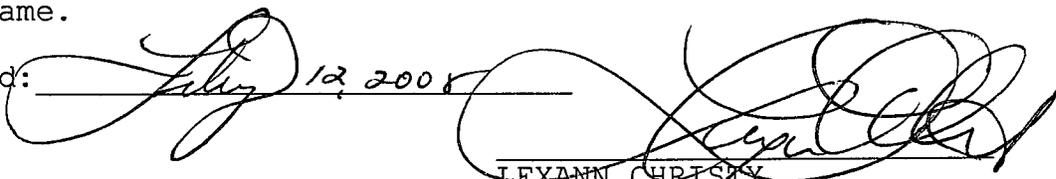
4 I, LEXANN CHRISTY, CSR No. 7932, in and for the
5 state of California, do hereby certify:

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

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

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

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

23 Dated: July 12, 2008
24 
25 LEXANN CHRISTY
CSR NO. 7932

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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

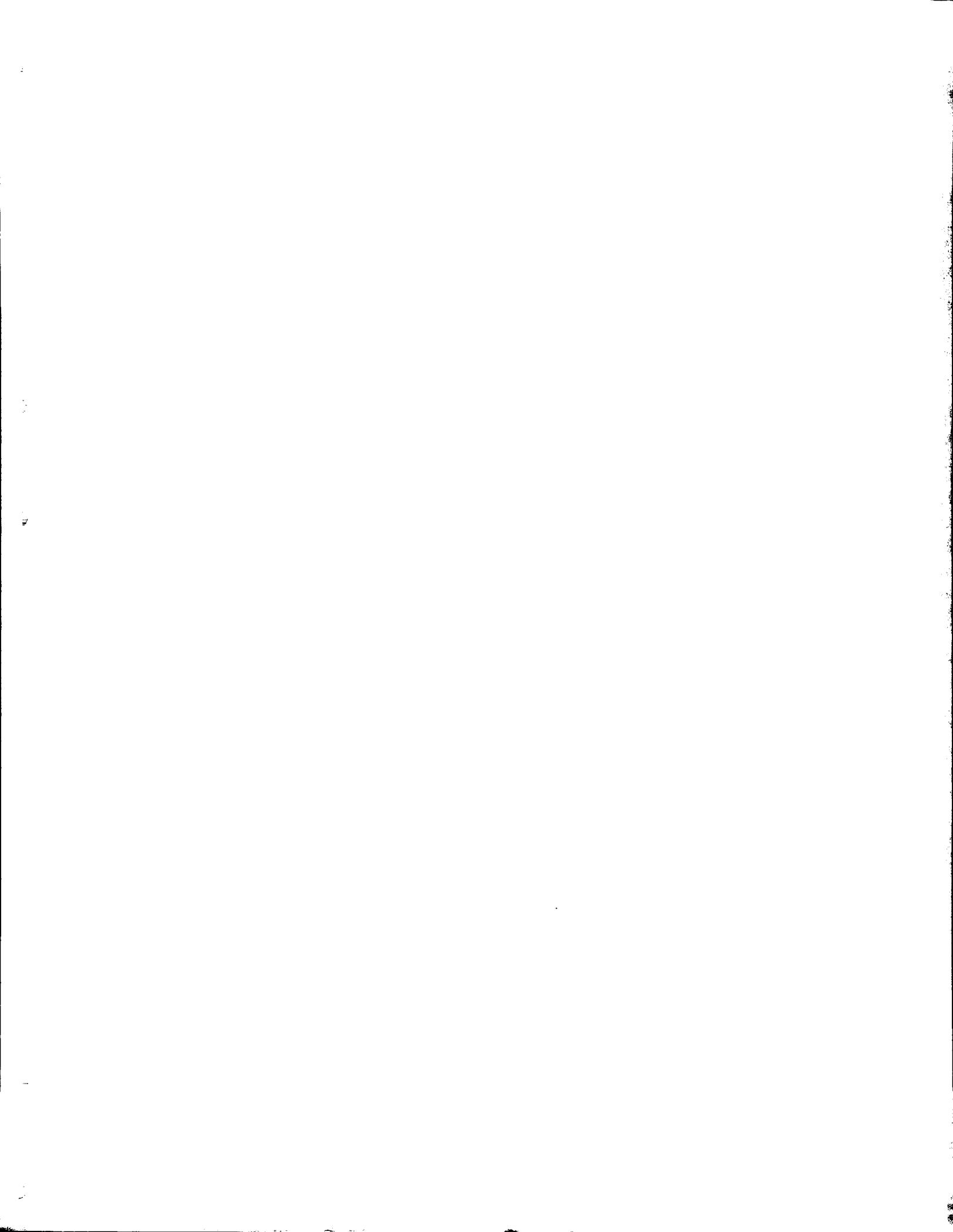
I, LEXANN CHRISTY, Certified Shorthand Reporter,
Certificate No. 7932, for the State of
California, hereby certify:

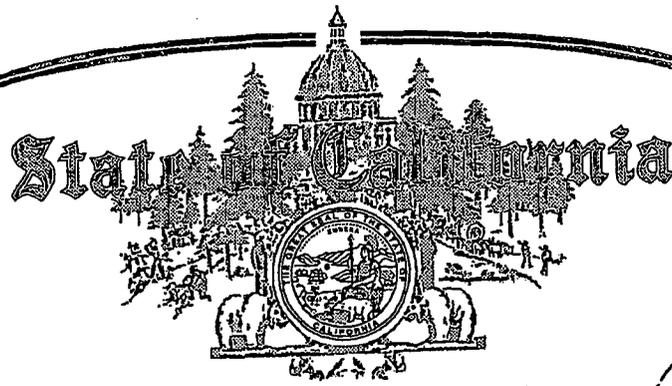
The foregoing is a true and correct copy of the
original transcript of the proceeding taken before me
as thereon stated.

Dated:

July 12, 2008


LEXANN CHRISTY, CSR 7932





SECRETARY OF STATE

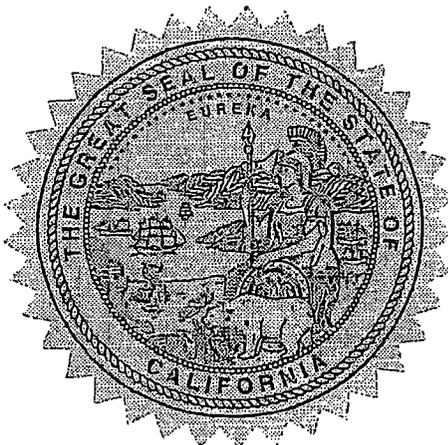


I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

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

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

APR 07 1928



Bill Jones

Secretary of State

2104624

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

APR -3 1998

ARTICLES OF INCORPORATION
OF
SANTANAS GRILL INC.

BILL JONES, SECRETARY OF STATE

I

The name of this corporation is:

SANTANAS GRILL INC.

II

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

III

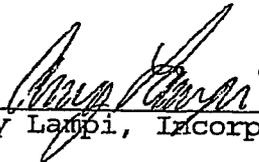
The name in the State of California of this corporation's initial agent for service of process is: Corporation Service Company which will do business in California as CSC-Lawyers Incorporating Service.

IV

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

1500 At No Par Value.

Dated: April 3, 1998



Amy Lampi, Incorporator



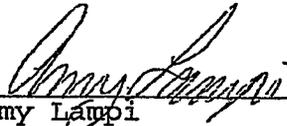
SG00098

ACTION OF SOLE INCORPORATOR

SANTANAS GRILL INC.

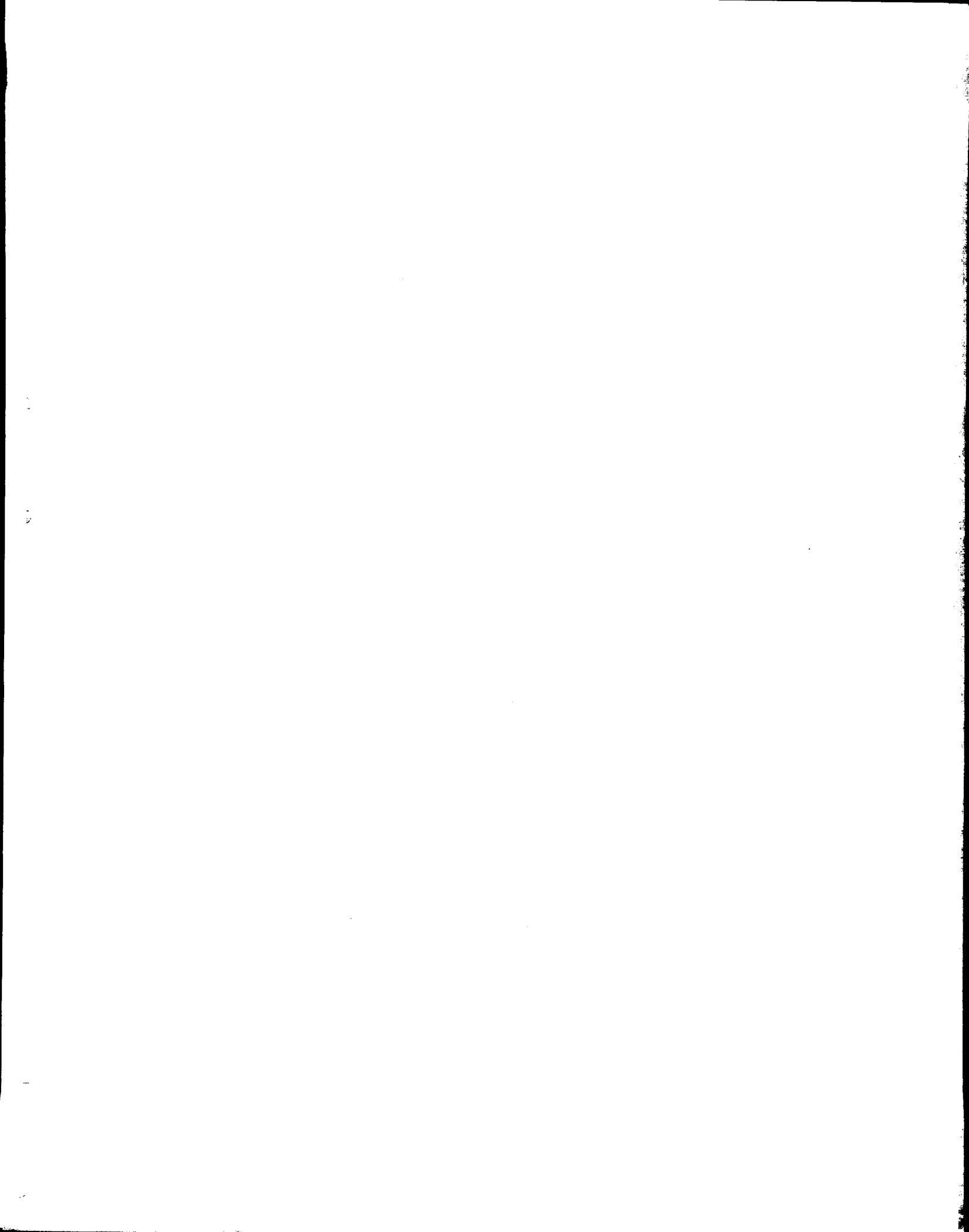
The undersigned, without a meeting, being the sole incorporator of the Corporation, does hereby elect the persons listed below to serve as directors of the corporation until the first annual meeting of shareholders and until their successors are elected and qualify:

AVELARDO SANTANA
CLAUDIA VALLARTA SANTANA



Amy Lampi
Incorporator

Dated: April 3, 1998



SANT.001T

SERVICE MARK

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

Mark : SANTANA'S MEXICAN
GRILL

Int. Class : 42

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

Dear Sir:

The Applicant is:

SANTANA'S GRILL, INC.,

a California corporation,

2067 Cecelia Terrace, San Diego, California 92110.

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

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

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

POWER OF ATTORNEY

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

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Petitioner's Exhibit No. 2

Case No. 92043152

Gallego vs. Santana's Grill

3 pages

SG00094

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

DECLARATION

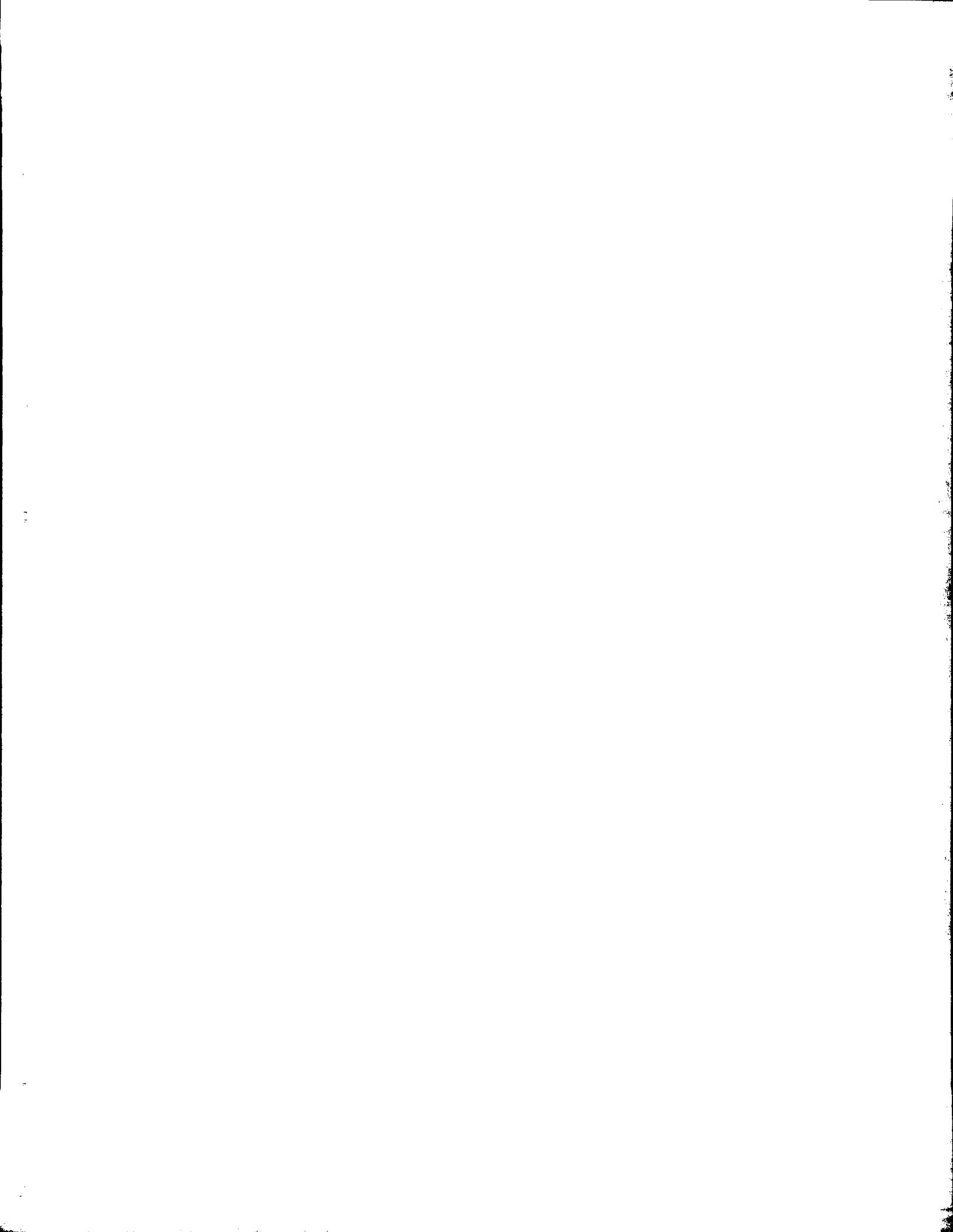
I, Claudia Santana, declare as follows: I am properly authorized to execute this application and declaration on behalf of said Applicant; I believe Applicant to be the owner of the mark sought to be registered, or, if the application is being filed under Section 1051(b) of Title 15 of the United States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

SANTANA'S GRILL, INC.

Dated: 11-27-01

By: 
Claudia Santana
Vice President

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102601



SANT.003T

SERVICE MARK

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

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

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

Dear Sir:

The Applicant is:

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a California corporation,
2067 Cecelia Terrace, San Diego, California 92110.

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

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

Petitioner's Exhibit No. 3
Case No. 92043152
Gallego vs. Santana's Grill

3 pages

Page 1 of 5

EXHIBIT 1 PAGE 2 OF 4

POWER OF ATTORNEY

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

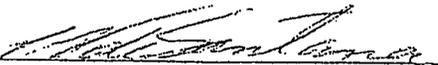
substitution and revocation to prosecute this application and to transact all business in the U.S. Patent and Trademark Office connected herewith.

DECLARATION

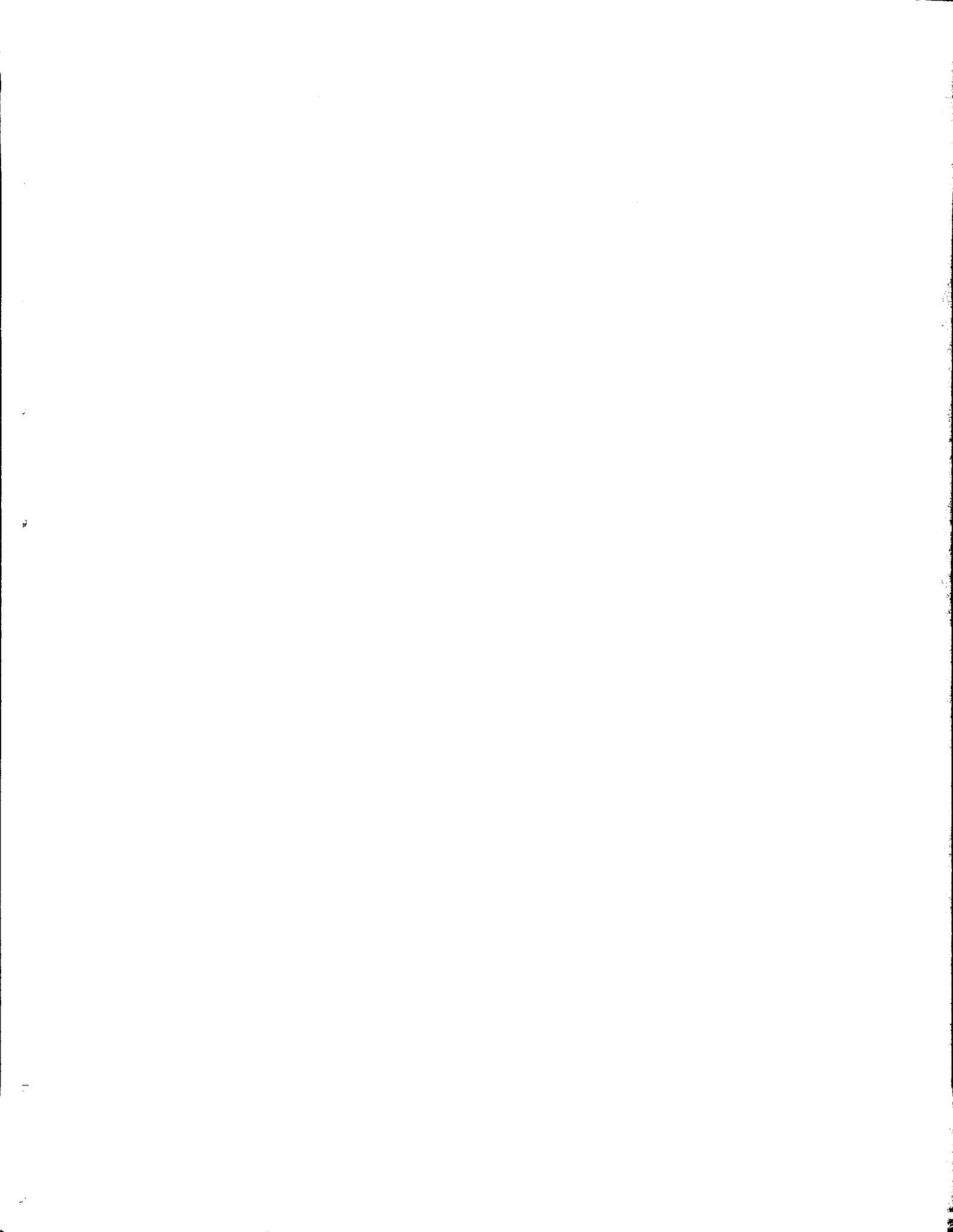
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SANTANA'S GRILL, INC.

Dated: 11-27-01

By: 
Claudia Santana
Vice President

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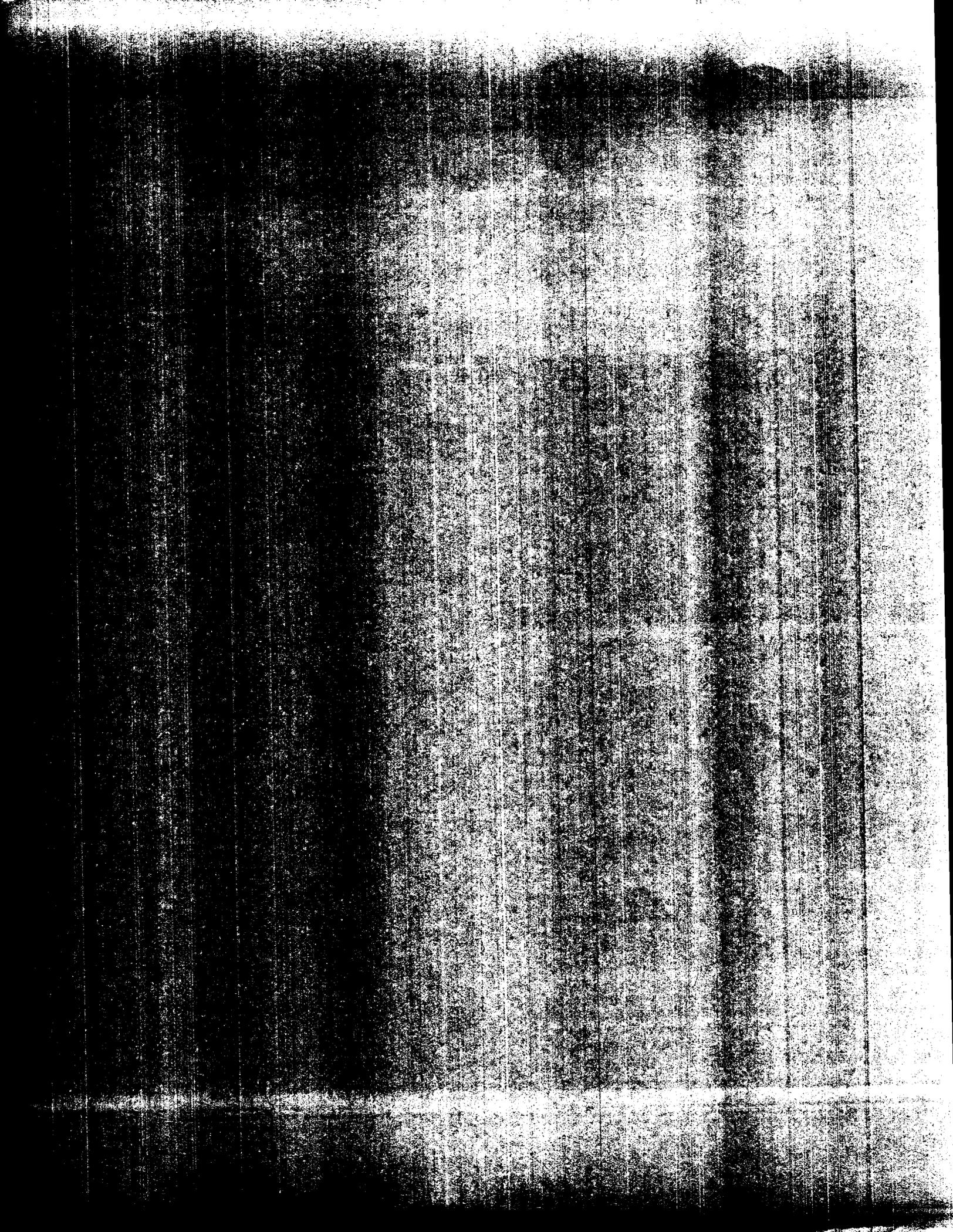
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Trial Deposition

Abelardo Santana Lee 1

(Cited as “Abelardo SL 1”)

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

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

DEPOSITION OF ABELARDO SANTANA

JANUARY 29, 2008



ABRAMS, MAH & KAHN
REPORTING SERVICE

Reported By: Lexann Christy
CSR No. 7932

File No.: 25611

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Abelardo Santana

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

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

Deposition of ABELARDO SANTANA, taken on behalf of
Petitioner, at Bremer Whyte Brown & O'Meara, LLP,
550 West C Street, Suite 1450, San Diego, California,
commencing at 9:38 a.m., on Tuesday, January 29, 2008,
before Lexann Christy, CSR No. 7932.

Abelardo Santana

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Claudia Vallarta-Santana

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Abelardo Santana

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT
ABELARDO SANTANA	4		

E X H I B I T S

(NONE)

INFORMATION REQUESTED

(NONE)

INSTRUCTIONS NOT TO ANSWER

(NONE)

Abelardo Santana

1 SAN DIEGO, CALIFORNIA, TUESDAY, JANUARY 29, 2008

2 9:38 a.m. - 11:49 a.m.

3
4 EUGENIA ARGUELLO,

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

9
10 ABELARDO SANTANA,

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

14
15 DIRECT EXAMINATION

16 BY MS. ARMENTA:

17 Q Good morning, Mr. Santana. Could you please
18 state your full name for the record.

19 A ABELARDO Santana.

20 Q What is your father's name?

21 A Arturo Santana.

22 Q What are your brothers' names?

23 A Arturo Santana Lee, Benito Santana Lee also and
24 Pedro Santana Lee, Ana Lillian Santana Lee.

25 Q What is the designation of the word "Lee"? Is

Abelardo Santana

1 that your mother's maiden name?

2 A Correct.

3 Q So you could have the same designation ABELARDO
4 Santana Lee?

5 A Correct.

6 Q But the name "Santana" came from your father?

7 A Correct.

8 Q Your father's surname is Santana?

9 A Correct.

10 Q And you and each of your brothers' surname is
11 Santana?

12 A Correct.

13 Q What is your ex-wife's name?

14 A Claudia Vallarta-Santana.

15 Q And the name "Santana" appended to your wife's
16 name, again, that name comes originally from your father?

17 A It comes from me for her.

18 Q It came from you to her?

19 A Correct.

20 Q And you got it from your father?

21 A Correct.

22 Q When did you first acquire any ownership interest
23 in any restaurant with the name "Santana" on it?

24 A Exactly, I don't remember the exact date, but it
25 was approximately between '92 and '93.

Abelardo Santana

1 Q And on which restaurant was it that you first
2 acquired an ownership interest with respect to a restaurant
3 that had the name Santana?

4 A The restaurant that I bought from my father was
5 in Rosecrans, 1480 Rosecrans, San Diego, California.

6 Q So that we have a clear record throughout the
7 rest of the testimonial deposition today, I will refer to
8 that restaurant as the Rosecrans restaurant. Is that okay?

9 A I agree.

10 Q So you say you first bought the Rosecrans
11 restaurant from your father and that was in 1992 or 1993;
12 is that correct?

13 A Correct.

14 Q Describe the transaction in which you say you
15 purchased the restaurant.

16 A When I got married to Claudia, I was the only one
17 that lived here in San Diego of the family, of my brothers
18 or siblings.

19 So being that I was the only one that was living
20 here in San Diego, I maintained control over the
21 restaurant. I had some apartments in Tecate that we had
22 built, my brother, Pedro Santana, and I.

23 Fifty percent of the apartment, I gave them to my
24 father, and the other \$20,000 I paid him for the
25 restaurant. It was a loan for a business that he had -- he

Abelardo Santana

1 was starting of gravel in Mexico.

2 Q You don't have any documentation, do you, to show
3 that your father had borrowed \$20,000 from you, do you?

4 A No.

5 Q And you don't have any documentation to show that
6 he was starting a gravel business in Mexico, do you?

7 A No, I don't have any documents.

8 Q And you don't have any documentation to show that
9 at any time you owned any apartments in Tecate, Mexico
10 which you then gave to your father, do you?

11 A Documents I don't have.

12 Q When I asked you in your deposition two years
13 ago, you couldn't even remember the address of that
14 property in Tecate, could you?

15 A Neither -- now I don't remember the address
16 either.

17 Q When I asked you where you got the \$20,000 to
18 lend to your father, do you remember that you told me "I
19 don't need to answer that"?

20 Do you know now where you got that \$20,000 that
21 you say you lent to your father?

22 A From the business that I was renting to him --
23 oh, I was renting from him. I was renting the restaurant,
24 and that was money that I had earned, and that money is the
25 one that I lent him, correct.

Abelardo Santana

1 Q How much were you paying in rent?

2 A \$6,000 a month I paid.

3 Q Did you have a lease?

4 A No. But Pedro and I were the ones that were
5 renting that restaurant from him, from my father.

6 Q So was Pedro assisting you in operating the
7 restaurant?

8 A Can you repeat that?

9 Q Was Pedro assisting you in operating the
10 restaurant?

11 A Well, assist -- it was an association that we had
12 between the two of us renting it.

13 Q After you rented it, did you then run the
14 restaurant or did you rent it to someone else?

15 A No, we rent the restaurant (in English). I
16 worked on it or managed it.

17 Q And what did Pedro do?

18 A He managed one shift, and I did the other.

19 Q And this was all prior to the time that your
20 father transferred ownership of the restaurant to you and
21 your wife?

22 A Yes, that was before that.

23 Q When did you first start working at the Rosecrans
24 restaurant?

25 A I don't remember the year, but I was 17 years

Abelardo Santana

1 old.

2 Q What year were you born?

3 A '69 (In English).

4 Q So would you agree that it was around 1986 that
5 you started working at the restaurant as a 17-year-old?

6 A '87, I think.

7 Q Who gave you that job?

8 A I worked for my father.

9 Q Did your father own the restaurant?

10 A Correct.

11 Q Did your father manage the restaurant?

12 MR. SANDSTRUM: I'm going to object, vague, as to what
13 period of time.

14 MS. ARMENTA: I'm referring to the time that you were
15 17 years old around 1987 when your father gave you your
16 first job in the restaurant.

17 Q Was your father then managing the restaurant?

18 A Well, Arturo, my brother, the oldest, and I, he
19 managed one shift and I did the other shift.

20 Q So at the time that you were 17 years old, you
21 were managing a shift at the restaurant?

22 A Yes.

23 Q Who was your boss?

24 A My father.

25 Q Who trained you?

Abelardo Santana

1 A I learned at Alberto's.

2 Q Not where or the name of the restaurant, who, who
3 trained you?

4 A I don't remember the person that trained me, but
5 it was the person that worked at that restaurant.

6 Q The restaurant, Alberto's?

7 A Correct.

8 Q Wasn't that the same restaurant, the Rosecrans
9 restaurant that your father owned?

10 A No.

11 Q Wasn't there a change of name from the Rosecrans
12 restaurant that started initially by Alberto's and then it
13 was named Corona's before it was named Santana's?

14 A Correct, that's the way it was, but the
15 restaurant where I learned is another location, other
16 owners. That's where I learned.

17 Q When you first started working at the Rosecrans
18 restaurant and you were 17 years old, are you saying you
19 required no training whatsoever to be a manager at that
20 restaurant?

21 A No. There I didn't learn. Where I learned to
22 cook and I learned the business of tacos was at Alberto's.

23 Q What was different between Alberto's and
24 Santana's? Were they just the same kind of regular
25 restaurant with no distinctions?

Abelardo Santana

1 A At the beginning when we opened, it was exactly
2 the same thing.

3 Q Except that your father owned the Rosecrans
4 location?

5 A Correct.

6 Q And you initially worked there with your older
7 brother, Arturo Santana Lee?

8 A Yes.

9 Q Who paid your wages when you worked there in 1987
10 and you were 17 years old?

11 THE INTERPRETER: Did you say '97 or '87?

12 MS. ARMENTA: '87.

13 THE WITNESS: My father paid me.

14 BY MS. ARMENTA:

15 Q Where was your father living at the time?

16 A In San Diego. He lived here in San Diego.

17 Q Where was your brother, Arturo Santana Lee,
18 living at the time?

19 A He lived in National City.

20 Q That's also located here in San Diego County
21 within the United States?

22 A Correct.

23 Q What was your next job after the job you occupied
24 when you were 17 years old that your father gave you?

25 A The next job that I had was after that I worked

Abelardo Santana

1 in Tecate. I worked at the bakery.

2 Q How long did you work there?

3 A I don't remember how long, months.

4 Q While you went to work at the bakery, were you
5 still working at the Rosecrans location?

6 A No.

7 Q Who was working at the Rosecrans location while
8 you were working at the bakery in Mexico?

9 A I remember -- well, Efrain Larraga.

10 Q What about your brother or any of your brothers?

11 A No. What we are talking about, that was many
12 years later. When I left that job, this was in '91, '92
13 when I went to work in Tecate or '93. I don't remember
14 exactly.

15 Q When you went to work in Tecate at the bakery
16 somewhere between 1991 and 1993, did your father continue
17 to own the Rosecrans location?

18 A Correct.

19 MR. SANDSTRUM: I object. It misstates testimony. He
20 doesn't remember the exact date, whether it was '92, '93,
21 '91.

22 MS. ARMENTA: That's why I gave him a range.

23 Q During that time, whenever it was -- I think you
24 said it was somewhere around '91, '92 or '93 -- and you
25 went to work at the bakery in Tecate, did your father

Abelardo Santana

1 continue to be the owner of the Rosecrans location?

2 A Correct.

3 Q At the time you were working in the bakery, did
4 you have any participation at all in managing the
5 operations of the Rosecrans location?

6 A No.

7 Q At some point later in time you were describing
8 this transaction to me where you acquired ownership of the
9 restaurant.

10 Do you remember that?

11 A Correct.

12 Q And you were talking about a \$20,000 debt and
13 some half of apartments in exchange for the Rosecrans
14 restaurant.

15 Do you remember that?

16 A Yes.

17 Q At that time did you have any discussions with
18 your father about the rights in the name of the restaurant?

19 A At that time when he sold me that restaurant,
20 that restaurant only had three months of rent lease.

21 MS. ARMENTA: I move to strike the witness' answer as
22 nonresponsive. I'll ask the exact same question again.

23 Q At the time that you purchased the restaurant
24 from your father, did you have any discussions with him
25 about the rights in the name of the restaurant?

Abelardo Santana

1 A No, I didn't have any. I didn't have any
2 negotiations about the name because he wasn't at that time
3 interested about the name at all because at that time the
4 name was not worth anything.

5 MS. ARMENTA: I move to strike the second portion of
6 the answer after the word "because" as nonresponsive.

7 Q Did you have any discussions with your father
8 concerning what happened if he assisted or agreed that the
9 other sons should open other restaurants?

10 MR. SANDSTRUM: Can you read that back for me?

11 (The record was read.)

12 MR. SANDSTRUM: I'm going to object as vague and
13 unintelligible.

14 MS. ARMENTA: You can answer the question,
15 Mr. Santana.

16 MR. SANDSTRUM: To the extent you understand it.

17 THE WITNESS: It's just that I don't understand it.

18 BY MS. ARMENTA:

19 Q Did you have any discussions with your father
20 about what would happen if your brothers opened other
21 restaurants with the same name?

22 MR. SANDSTRUM: Vague as to time.

23 MS. ARMENTA: We're talking about at the time of your
24 purchase of the Rosecrans restaurant.

25 THE WITNESS: No, nothing was mentioned about that.

Abelardo Santana

1 The reason why nothing like that was mentioned is because
2 all my siblings had their own businesses and they were
3 working in their own things. The truth is that I -- when I
4 started this business and when I bought it from my father,
5 I went to my brothers and my parents and I offered them to
6 have just one business, the bakery, the gravel plant, other
7 businesses.

8 I offered them let's make one business and
9 everybody gets a salary, and they said -- all my siblings
10 were in agreement, and at the moment that we presented it
11 to my parents and we told them what we wanted to do, they
12 said absolutely not.

13 I came back. From that moment on I decided,
14 okay, this business, nobody has anything to do with it in
15 Santana's, and everybody -- it was understood because
16 nobody wanted to have anything to do with Santana's.

17 BY MS. ARMENTA:

18 Q So if I understand what you're telling me, at the
19 time that you purchased the Rosecrans location, you were
20 going to be the only person that had a restaurant that had
21 the name "Santana's" on it amongst your family; is that
22 right?

23 MR. SANDSTRUM: I'm going to object. That misstates
24 his testimony.

25 BY MS. ARMENTA:

Abelardo Santana

1 Q Tell me if it misstates your testimony. Is that
2 correct or not?

3 A If your question is referring to the Yucca
4 Valley, Yucca Valley was outside the map. It was a place
5 in San Bernardino. It was a restaurant that they didn't
6 know what to do with it because it was not a business.
7 Arturo had to come back. Arturo Santana Lee had to come
8 back from that business because he couldn't manage it.

9 Q Let's see if we can be clear about your answer.

10 MR. SANDSTRUM: I'm going to ask to stop real quick.
11 This simultaneous translation is making it difficult for me
12 to hear the English translation, so if we could do it the
13 other way, it would be appreciated.

14 THE INTERPRETER: Can I ask you a question? Can I
15 continue doing simultaneous, the English to the Spanish?

16 MR. SANDSTRUM: Yes.

17 MS. ARMENTA: I'll try to slow down too.

18 Off the record.

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

20 MS. ARMENTA: Back on the record.

21 Q So at the time that you purchased the restaurant,
22 your father stopped being an owner of the Rosecrans
23 restaurant; is that correct?

24 A Correct.

25 Q And at that time you and your wife became the

Abelardo Santana

1 only owners of the Rosecrans restaurant; is that right?

2 A Correct.

3 Q And at that time your father, Arturo Santana,
4 still owned another restaurant, correct?

5 A Yes.

6 Q And that restaurant was located in Yucca Valley,
7 correct?

8 A Correct.

9 Q And that restaurant was called Santana's Mexican
10 Food; is that correct?

11 A Correct.

12 Q In 1992 or -- strike that because I don't think
13 he testified as to the year.

14 At the time that you acquired the interest in the
15 Rosecrans restaurant along with your wife and your father
16 continued to own the Yucca Valley restaurant, the two
17 restaurants were using the same suppliers or vendors,
18 right?

19 A Yes, correct.

20 Q That's because they were making or providing to
21 the public roughly the same menu, correct?

22 A Yes.

23 Q Now, yesterday did you hear your ex-wife testify
24 that she went to the Yucca Valley restaurant to visit
25 family and friends, to accompany you to take supplies and

Abelardo Santana

1 later for work related to the logo? Do you have in mind
2 that testimony?

3 A Yes.

4 Q Now, did you go to the Yucca Valley restaurant to
5 deliver supplies to the Yucca Valley restaurant?

6 A Yes.

7 Q And between the time that you acquired the
8 Rosecrans restaurant and 1998, did you continue to do that
9 over that six-year period, or did you do that only towards
10 the beginning of that period?

11 A No. During all those years I was always taking
12 the -- well, not always me, not always me, the merchandise
13 for Yucca Valley.

14 Q So whether it was you or someone else, someone
15 was taking merchandise to the Yucca Valley restaurant,
16 merchandise that was used both at the Yucca Valley
17 restaurant and at the Rosecrans location; is that correct?

18 A No, that's not correct. The question makes me
19 think that the merchandise was bought at the same time.
20 The merchandise was bought totally separate. I was
21 delivered every day meat, tortillas and vegetables, and for
22 Yucca Valley we went only once a week.

23 Q So was the Rosecrans location selling or
24 providing the meat, tortillas and vegetables to the Yucca
25 Valley location?

Abelardo Santana

1 A No, no.

2 Q How did Yucca Valley pay for the meat, tortillas
3 and vegetables that you say was delivered to that location
4 once a week?

5 A Okay, number one, I don't say I did take it. I
6 took the merchandise -- the merchandise was paid to me, and
7 then I would come and pay the receipts. That's all.

8 Q Other than the delivery of merchandise, were
9 there any other reasons for which you visited the Yucca
10 Valley restaurant between the time you purchased the
11 Rosecrans restaurant and the present?

12 A Yes. When the people that were in charge of the
13 restaurant went on vacation, I would go and would help to
14 be there and everything.

15 Q Was that during the time period that your father
16 still owned Yucca Valley?

17 A Correct.

18 Q Who asked you to go and tend to Yucca Valley
19 while the persons who were running it went on vacation?

20 A Arturo Santana.

21 Q When you say "Arturo Santana," do you mean Arturo
22 Santana Gallego, your father?

23 A Gallego, uh-huh.

24 Q Is that a "yes"?

25 A Yes.

Abelardo Santana

1 Q Other than delivering goods and going to tend to
2 the restaurant when your father asked you when managers
3 were on vacation, and I think you testified before about
4 going there for a wedding, are there any other reasons that
5 you have gone to the Yucca Valley restaurant between the
6 time that you acquired the Rosecrans restaurant and the
7 present?

8 A From when I acquired it, right now I already
9 explained that it was when I delivered the merchandise.

10 Q Are there any other reasons that you haven't told
11 me about that you visited the Yucca Valley restaurant ever?

12 A No.

13 Q In 1992 -- strike that because you haven't
14 testified as to the year.

15 After you acquired the Rosecrans restaurant and
16 your father retained the Yucca Valley restaurant, did you
17 tell your father how to run the Yucca Valley restaurant?

18 A Many times.

19 Q Did he listen to you?

20 A No.

21 Q So were you in control of the Yucca Valley
22 restaurant?

23 A No.

24 Q After your father began to sell his interest in
25 the Yucca Valley restaurant to Arturo Castaneda, did you

Abelardo Santana

1 tell Arturo Castaneda how to run the Yucca Valley
2 restaurant?

3 A No, I didn't meddle in that.

4 Q You were aware from all your trips to Yucca
5 Valley from the time you acquired Rosecrans until the
6 present that that restaurant bears the name Santana's
7 Mexican Food, correct?

8 A Correct.

9 Q And did you also tell your father that he should
10 not sell the Yucca Valley restaurant to Arturo Castaneda,
11 he should only rent it to him?

12 A Yes.

13 Q Did he listen to you?

14 A No.

15 Q So in any way did you control the transaction by
16 which your father began to sell his interests in the Yucca
17 Valley restaurant to Arturo Castaneda?

18 A Well, I thought being that he didn't know what he
19 was going to do with that restaurant, my father asked me
20 "Hey, don't you have somebody that can help me, somebody
21 that" -- well, he -- being that he already before had
22 offered to -- he had already offered to one of my workers,
23 his name is Honorio Castaneda -- for him to go and manage
24 the restaurant in Yucca Valley, but the reason that did not
25 go through was because he didn't have papers yet, so I told

Abelardo Santana

1 my father -- I put him in contact with Arturo Castaneda,
2 and that's where I told him, "Look, Father, this place,
3 rent it to him, don't sell it to him, because you're going
4 to get my people out of control," and he went and did
5 whatever he wanted to do.

6 Q So would you agree, then, that your father did
7 not listen to your advice and he structured the sale
8 transaction to Arturo Castaneda as he saw fit, not as you
9 saw fit?

10 A Correct.

11 Q Do you have any knowledge of any radio
12 advertisement that your father purchased for the Yucca
13 Valley restaurant?

14 A No.

15 Q During the time that your father owned the Yucca
16 Valley restaurant, did you control the prices that your
17 father charged consumers for food or drink on the menu at
18 that location?

19 A No.

20 Q And at the time that your father owned the Yucca
21 Valley restaurant and you owned the Rosecrans restaurant,
22 did you control your father's selection of recipes?

23 A Indirectly, because if I would introduce, for
24 instance, as an example, achiote chicken, I would try
25 something, and if it worked, they would put it in the menu,

Abelardo Santana

1 and if not, they would not put it in the menu.

2 Q But would you agree that it was your father at
3 that point who could decide to put it on or decide not to
4 put it on?

5 A No, I don't know who decided.

6 Q So you don't know who at the Yucca Valley
7 restaurant was in control of the menu choices, right?

8 A Well, they had people in charge. It was Cervando
9 Padilla and Blanca Padilla, so the reality is that they
10 would make some changes that neither my father nor I had
11 control over. That is the reality.

12 Q At this time that Cervando Padilla and Blanca
13 Padilla were working at the restaurant, your father was
14 their boss, right?

15 A I don't know what you are referring to as a boss.
16 When I say boss, is a person that is there at least once a
17 day, right?

18 Q Then that's not what I'm referring to.

19 Did your father own the restaurant?

20 A Correct.

21 Q Did Cervando Padilla and Blanca Padilla work in
22 the restaurant?

23 A Correct.

24 Q You said before that Cervando Padilla and Blanca
25 Padilla were making changes at the Yucca Valley restaurant

Abelardo Santana

1 that were outside of your control, right?

2 A Correct.

3 THE INTERPRETER: Excuse me, is the word "Cervando" or
4 "Cervante"?

5 THE WITNESS: Cervando.

6 THE INTERPRETER: -d-o at the end.

7 MS. ARMENTA: Read back the last question and answer,
8 please.

9 (The record was read.)

10 BY MS. ARMENTA:

11 Q Did those choices that were outside your control
12 include choices over menu selections?

13 A Of the recipes.

14 Q Any other choices that Cervando and Blanca were
15 making that were outside of your control?

16 A I didn't -- I had no control over it. I tried.
17 I tried to tell them how they were doing things. I was
18 trying to tell them how things worked. There were things
19 that were functioning or working out in San Diego, and I
20 was just trying to tell them how things worked.

21 Q And aside from the choices in recipes, were there
22 any other things where they made choices and didn't listen
23 to you?

24 A Yes. I don't remember what things, but there
25 were things.

Abelardo Santana

1 Q Do you remember what years Cervando Padilla and
2 Blanca Padilla worked at the Yucca Valley restaurant?

3 A Around '89 until around '96, more or less.

4 Q When was it that you started to tell Cervando and
5 Blanca Padilla how to do things? Was that before or after
6 you acquired the Rosecrans location?

7 A Well, I want it clear that I didn't tell them how
8 to do things. I only gave them suggestions.

9 Q Now, did you give them suggestions for the entire
10 period from 1989 through 1996, or was it only in some
11 years?

12 A Well, it must have been all those years, because
13 I would go there, and I would see things that were working
14 out here in San Diego, and if they were working out for me,
15 then I would tell them to do the same. That's all.

16 Q Did the nature of your advice change after you
17 purchased the Rosecrans location, or was it still that you
18 were just giving them advice because you saw how well
19 things were in San Diego?

20 THE INTERPRETER: He's going to start again.

21 MS. ARMENTA: I got it all down in English.

22 THE WITNESS: The reason -- I just lost my track of
23 thought.

24 BY MS. ARMENTA:

25 Q Let me help. You said -- we had a little

Abelardo Santana

1 interpreter --

2 THE INTERPRETER: Glitch.

3 MS. ARMENTA: -- glitch. I didn't mean to offend.

4 Q But is it fair that your perspective is that once
5 you purchased the restaurant in San Diego, you wanted to
6 tell Blanca and Cervando because there was some confusion?
7 Is that what you were saying?

8 A Correct.

9 Q Now, let me ask my question now that you got your
10 answer in.

11 Here is my question: Did you continue to give
12 them advice between 1989 and 1996 with respect to the Yucca
13 Valley restaurant?

14 A Yes, suggestions, talking of how to improve
15 things to avoid that confusion.

16 Q And did you speak to your father about this, as
17 well?

18 A Probably.

19 Q But you don't have a specific recollection?

20 A Yes, I do remember having mentioned to my father
21 several times about the quality of what they were doing.

22 MR. SANDSTRUM: Can we go off the record real quick?
23 When you're ready, I would just like to have a rest room
24 break.

25 MS. ARMENTA: Okay, let's go off the record now.

Abelardo Santana

1 (A recess was taken.)

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

3 Q Mr. Santana, prior to the time that you worked at
4 the Rosecrans location, your brother, older brother, Arturo
5 Santana Lee, worked there, right?

6 A Correct.

7 Q Do you know what his job was at that time?

8 A He was in charge of one of the shifts.

9 Q And that was the same type of job that you
10 occupied when you began working there at approximately
11 17 years old?

12 A Yes. He was in charge of the shift from 10:00 in
13 the morning until 6:00 in the afternoon, and I worked from
14 6:00 in the afternoon to 2:00 in the morning. And the
15 reason why he worked the morning shift is because he was
16 married.

17 Q And in terms of who employed you and your brother
18 at that time as shift managers, is it true that you were
19 both employed by your father, Arturo Santana?

20 A Correct.

21 Q And this was certainly before you and your wife
22 owned the Rosecrans location, correct?

23 A Correct.

24 Q When did your other older brother, Pedro Santana,
25 work in the family business before he opened his current

Abelardo Santana

1 restaurant?

2 A I don't remember exact dates, but he and I worked
3 together.

4 Q And was that before you and your wife acquired
5 the Rosecrans location as owners?

6 A Correct.

7 Q And like you and like your older brother, Arturo
8 Santana, the person who employed your other brother, Pedro
9 Santana, was your father, Arturo Santana?

10 A I didn't understand the question.

11 Q Who hired Pedro Santana?

12 A I did. I hired him.

13 Q Maybe I didn't get the question out. Let me try
14 it again.

15 A Yes, I did understand it.

16 Q Who owned the restaurant at the time that Pedro
17 Santana worked there?

18 A Arturo Santana.

19 Q When you say "Arturo Santana," you mean your
20 father, correct?

21 A Yes.

22 Q So is it correct that before you and your wife
23 acquired the Rosecrans location and your father owned the
24 Rosecrans location, you worked there, Pedro Santana worked
25 there and your brother Arturo Santana worked there; is that

Abelardo Santana

1 right?

2 A Yes.

3 Q What job did Pedro Santana have when he worked at
4 the Rosecrans location prior to the time that you acquired
5 ownership interest in it?

6 A I was already renting from my father already. I
7 used to pay -- when Pedro came in, I used to pay rent to my
8 father, and Pedro came in, and I said, "Let's go into it,
9 and whatever is left for me, then we will just go halves."

10 Q So before you started renting the restaurant from
11 your father did Pedro ever work there?

12 A No.

13 Q You know Arturo Castaneda, right?

14 A Yes.

15 Q And is it correct that he began in the business
16 as a cook at the Rosecrans location?

17 A He worked there as a cook.

18 Q During what years did he work there?

19 A I don't remember.

20 Q Who owned the restaurant at the time Arturo
21 Castaneda worked there as a cook?

22 A No, I don't remember.

23 Q You don't remember who it was between you and
24 your wife on the one hand and your father on the other
25 hand?

Abelardo Santana

1 THE INTERPRETER: I didn't understand the question.

2 BY MS. ARMENTA:

3 Q You don't remember who owned the restaurant as
4 between you and your wife on the one hand and your father
5 on the other hand?

6 A I'm trying to remember. Claudia and I were
7 already owners when Arturo Castaneda worked there, yes,
8 yes.

9 Q Was he -- did he work there also prior to the
10 time that you and Claudia were owners?

11 A No, no, I don't know, because you have to take
12 into consideration that there was a time when I wasn't
13 there. I don't know if he worked there at that time.

14 Q Aside from the months that you spent at the
15 bakery in Tecate, between the time you were 17 years old
16 and the present, were there any other periods during which
17 you did not work or own the restaurant?

18 MR. SANDSTRUM: I'm going to object as vague and
19 ambiguous. I'm not sure I understand the question.

20 MS. ARMENTA: Let me rephrase it then.

21 Q You started working at the Rosecrans location
22 when you were 17, right?

23 A Correct.

24 Q You worked there continuously from the time you
25 were 17 for how long?

Abelardo Santana

1 A Until I was 21, 22. I stopped working a few
2 months, those months, and then I continued working. I have
3 always worked. I have never stopped working.

4 Q When you say "I have always worked, I have never
5 stopped working," are you referring to the Santana's
6 restaurant business?

7 A Yes, that's what I am referring to.

8 Q So let me see if I can get my question out
9 clearly.

10 The only absence that you had from the Santana's
11 restaurant business were those few months when you worked
12 at the bakery in Tecate?

13 A Yes.

14 Q Now, before you even acquired any ownership
15 interest in the Rosecrans location, your father had begun
16 selling Mexican food at that location, correct?

17 A Correct.

18 Q And he had set up relationships with vendors
19 during that time period?

20 A Yes.

21 Q And he had established a menu at that location;
22 is that correct?

23 A Correct.

24 Q And he had established recipes that corresponded
25 with the items on the menu at that location; is that

Abelardo Santana

1 correct?

2 A At that time, yes, it was those recipes or
3 vendors, but now only one vendor from all the ones he had
4 is the only one that is still there. All the other vendors
5 are new. And of the menu and the recipes, I think that --
6 I estimate that 25 percent is still from the original that
7 he made.

8 Q So let me make sure I have this clear.

9 After approximately 16 or 17 years since your
10 father owned the restaurant, you're still using one of the
11 same vendors that he introduced you to?

12 A Correct.

13 Q What vendor is that?

14 A Gustavo Gonzalez.

15 Q Is Gustavo Gonzalez the tortilla maker?

16 A No, he doesn't make them. He's a broker.

17 Q So the vendor that you are continuing to use that
18 your father introduced you to after 16 or 17 years is the
19 tortilla supplier?

20 A I'm going to clear something. I met this person
21 five or six years before I was already his client --

22 MS. VALLARTA-SANTANA: "After I was already his
23 client."

24 THE INTERPRETER: Didn't I say that?

25 THE REPORTER: You said "before."

Abelardo Santana

1 MS. ARMENTA: I agree with the change in
2 interpretation.

3 THE WITNESS: I used to talk to him on the phone until
4 one day they were selling vegetables, I heard his voice,
5 and then I met him, but my father never introduced me to
6 him. He didn't say you're going to do business with him.

7 BY MS. ARMENTA:

8 Q Your father was doing business with Gustavo
9 Gonzalez at the time you purchased the restaurant from your
10 father; is that correct?

11 A Correct.

12 Q And to this day in 2007 you continue to use the
13 same person your father used as the tortilla supplier --
14 2008; is that correct?

15 A Correct. And I want to make clear that the only
16 reason that I'm still buying tortillas from him is because
17 nobody else, even the owner of the factory -- I went to
18 talk to him because I wanted to buy directly from him. The
19 reason why, because Mr. Gonzalez had a fraud on top of me
20 of more than \$5,000. On top of that I still have to be his
21 client because nobody is going to sell me that quality of
22 tortilla because he controls it. It is a monopoly.

23 Q Tell me, what percentage of your customers order
24 dishes that contain tortillas, either as part of the dish
25 or on the side or as chips?

Abelardo Santana

1 A All of them.

2 Q So one hundred percent of your customers are
3 using a product from the tortilla supplier, the same one
4 that your father used before he sold you the restaurant; is
5 that correct?

6 A Correct.

7 Q Now, you said that 25 percent of the recipes that
8 you use are the same as the recipes that your father used
9 16 or 17 years ago; is that correct?

10 A When I said "recipes," I was referring to things
11 that are prepared that we prepare. One of the only things
12 that we do not prepare ourselves that is contained in that
13 25 percent that I was talking about are the corn and flour
14 tortillas and the chips.

15 Q So when you said "recipes," you were referring to
16 tortillas?

17 A No, I think I'm not explaining myself. When I
18 say "recipes," I am referring to the preparation of
19 everything that I sell.

20 Q So give me some examples of some of the things
21 that you sell where you are using the same recipes as your
22 father and before he sold you the restaurant.

23 A Well, ask me what it is you want me to tell you.

24 Q I want you to tell me what dishes are included in
25 that 25 percent figure that you gave me.

Abelardo Santana

1 A Okay, the tortillas. What other things? In a
2 certain manner the red sauce is prepared in a similar
3 manner, but we already changed the recipe. What else? I'm
4 going to tell you something else right now.

5 For instance, the beans, the beans before --
6 before the beans were cooked -- they would be just cooked
7 in the water. Now we soak them, we change the water and
8 then we cook them. Before we only added salt. Now we cook
9 them. The salt is added once they are already cooked, and
10 we add garlic and onion.

11 Q Are there any items you can think of in that
12 25 percent where your recipes are the same or similar to
13 the recipes that your father used?

14 A It's just that really we prepare everything
15 differently. The rice is prepared in a different manner,
16 the beans, the carne asada or grilled meat.

17 My example, the carne asada, we used to buy it
18 sliced top round. Now we handle meat -- a meat that is
19 already prepared, it's already cut up or minced. It's
20 meat. That's why I said 25 percent. One thing that is
21 very important, and it's --

22 Q I appreciate that, but I wasn't asking about
23 changes, I was asking about similarities.

24 Can you think of any other similarities right
25 now?

Abelardo Santana

1 A No.

2 Q Have you been to your brother's restaurant at
3 411 Broadway in El Cajon?

4 A Yes.

5 Q Are there menu items that you're aware on his
6 menu that are the same or similar to the menu items that
7 your father offered when he owned the Rosecrans location?

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

10 MS. ARMENTA: At any time.

11 THE WITNESS: Well, when my brother took over that
12 restaurant, I had already made all those changes that I'm
13 talking about, and nine years had gone by already. I think
14 that the majority of those changes had already been made.

15 MS. ARMENTA: I appreciate that. I'll just have to
16 move to strike your answer as nonresponsive because I'm not
17 asking about changes, I'm asking about similarities.

18 Q So the question again is: What similarities, if
19 any, are there between your brother's menu at the El Cajon
20 restaurant at any time and the recipes or the menu that
21 your father used years and years ago when he owned the
22 Rosecrans location?

23 MR. SANDSTRUM: I'm going to object that it lacks
24 foundation.

25 THE WITNESS: I don't know what my brother does now.

Abelardo Santana

1 If you're asking me, I don't know what he's doing right
2 now.

3 BY MS. ARMENTA:

4 Q Are you familiar with the California Burrito that
5 your father offered at his Rosecrans restaurant and also
6 the Yucca Valley restaurant prior to the time that
7 Rosecrans was sold to you?

8 A Yes.

9 Q After you acquired the restaurant, did you
10 continue to offer a menu item called the California Burrito
11 or based on the California Burrito?

12 A Yes.

13 Q Does that California Burrito include the recipe
14 element of a choice of meat and potatoes, among other
15 things?

16 A Right now today it has changed a lot. Right now
17 it offers meat, chicken, carnitas, fish. You can have a
18 California Burrito with any kind of meat you wanted.

19 Q Right. That was my question, you can get a
20 choice of meat or fish, but then it also has potatoes in
21 the California Burrito; isn't that right?

22 A Yes.

23 Q And that's a menu item that you have offered
24 consistently since the time that you acquired the
25 restaurant until the present; isn't that true?

Abelardo Santana

1 A Yes, correct.

2 Q Is it not also true that you're aware your
3 brother, Arturo Santana Lee, offers a menu item called the
4 California Burrito on his menu?

5 A Yes, yes.

6 Q And isn't it also true that you're aware that the
7 Yucca Valley restaurant offers a recipe -- a menu item
8 called the California Burrito?

9 A Yes.

10 Q And is it also true that even before you acquired
11 the Rosecrans restaurant, your father offered a menu item
12 called the California Burrito?

13 A No.

14 Q Isn't it true that he offered that in the Yucca
15 Valley location?

16 A I don't remember that. They might have sold it.

17 Q You don't remember or you're sure he didn't?
18 There's a difference.

19 A If they sold it, it would sell, not as an
20 exaggeration, but in a day probably they would sell three
21 California Burritos.

22 Q How is that if you don't remember if he even
23 offered it as a menu item, yet somehow you can remember how
24 many were sold on a daily basis?

25 MR. SANDSTRUM: I'm going to object as argumentative.

Abelardo Santana

1 BY MS. ARMENTA:

2 Q You can answer the question.

3 A Because I was selling them in Rosecrans.

4 Q So then it is true that at the time your father
5 owned the restaurant, he was offering for sale a menu item
6 called the California Burrito, right?

7 MR. SANDSTRUM: I think he's confused on whether or
8 not it was a menu item or offered for sale.

9 MS. ARMENTA: I don't.

10 THE WITNESS: It was offered for sale.

11 BY MS. ARMENTA:

12 Q And you actually participated in the sale of the
13 California Burrito while your father owned the restaurant;
14 isn't that true?

15 A Yes, it's true.

16 Q And the California Burrito that your father made
17 also included some kind of meat but also included potatoes;
18 isn't that right?

19 A Yes.

20 Q And that California Burrito was also made with a
21 tortilla that was supplied by Gustavo Gonzalez?

22 A Yes. Can I say something about the California
23 Burrito or I cannot talk?

24 Q When your lawyer asks you questions, then you'll
25 have a chance to give your story. It's my turn on behalf

Abelardo Santana

1 of my clients, which includes your father and your
2 brothers, to ask you the questions that I'm putting to you.
3 So when I'm done today, your lawyer will have a chance to
4 ask you questions and you can then tell your story.

5 What kind of assistance did your father give you
6 in setting up the Rosecrans location?

7 A When he sold it to me, he sold me the business.

8 Q When he sold you the business, did it have a
9 physical building?

10 A Yes.

11 Q And did it have tables and chairs and places for
12 people to eat?

13 A He was not selling me either the building or the
14 tables or the chairs. He was selling me the contract that
15 only had three months left.

16 Q When you say "the contract," do you mean the
17 lease?

18 A Correct.

19 Q So he assigned his rights in the lease to you?

20 A Yes.

21 Q And were you using any of the things that your
22 father had purchased in connection with his business, like
23 chairs, pots and pans, paper towels?

24 A With the \$40,000 I bought that.

25 Q So with the \$40,000 you bought all the physical

Abelardo Santana

1 things that were located inside the restaurant and
2 building; is that right?

3 A Correct.

4 Q So it might be similar to our experience of sort
5 of a furnished apartment, as opposed to an unfurnished one,
6 it had all the stuff in it that a restaurant needs to run;
7 is that right?

8 A Correct.

9 Q So before you purchased the business, your father
10 had already picked out things like what kinds of tables,
11 what kinds of chairs, what kinds of pots and pans and the
12 other items that you need to run a restaurant; is that
13 right?

14 A You are still referring to the chairs and the
15 tables as if it had been a restaurant that had a dining
16 room. It was a restaurant that didn't even have a dining
17 room.

18 Q What did it have when you purchased it?

19 A Two park benches outside.

20 Q And what did it have inside in terms of
21 preparation for food?

22 A A stove, a grill, a frier, a steam table.

23 Q Did it have a sign?

24 A Yes, it did have a sign.

25 Q What did the sign say?

Abelardo Santana

1 A "Santana's."

2 Q Just "Santana's" or "Santana's Mexican Food"?

3 A "Santana's Mexican Food."

4 Q And that sign was there before you acquired an
5 interest in the business; is that right?

6 A Correct.

7 Q So among the things that you purchased from your
8 father was the interest that he had in the lease for the
9 premises; is that right?

10 A Correct.

11 Q And the equipment of which we already talked
12 about, right?

13 A Correct.

14 Q So you got the lease and you got the equipment;
15 is that right?

16 A Yes.

17 Q And with your father's transfer of ownership to
18 you of the Rosecrans location, which included things like
19 the equipment, the lease, you were able to build your
20 business and grow it into a very successful business, true?

21 A Correct.

22 Q Now, you assisted your brother in opening the
23 El Cajon restaurant; is that right?

24 A I opened -- we opened the restaurant in El Cajon.

25 Q What role did your brother have?

Abelardo Santana

1 A He was bringing the money.

2 Q Did you ever acquire any ownership interest in
3 the Rosecrans restaurant?

4 THE INTERPRETER: Excuse me?

5 BY MS. ARMENTA:

6 Q Did you ever acquire any ownership interest --
7 excuse me, I misspoke -- in the El Cajon restaurant?

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

10 THE WITNESS: When my brother came to me and said he
11 wanted to open up a restaurant here in San Diego, I told
12 him, yes, gladly I would help him, and he -- I told him the
13 only thing I want is that we do the same, that we have the
14 same recipes, that we buy in volume in order to save money.
15 My benefit will be to save money in volume.

16 BY MS. ARMENTA:

17 Q Was that it?

18 A Well, no, and he agreed. He agreed that the name
19 was mine, that I had bought the name from my father and
20 that the name was mine.

21 Q Did he tell you that or do you think that?

22 A I told him.

23 MS. ARMENTA: Read back that last answer, please.

24 (The record was read.)

25 THE WITNESS: Correct. Why would you think that I'm

Abelardo Santana

1 going to give him the signature so he can open a business,
2 I'm going to register it, I'm going to -- so I'm going to
3 train employees, so he will come and keep the name?

4 BY MS. ARMENTA:

5 Q Well, there was another restaurant with the name
6 on it and you didn't own that one, did you?

7 A It was 150 miles distance. That business didn't
8 have any sales that were worth anything.

9 Q Then if it wasn't worth anything, why were you
10 telling your father and Blanca and Cervando how to run it
11 if it was irrelevant?

12 MR. SANDSTRUM: Objection. Vague as to time.

13 BY MS. ARMENTA:

14 Q You can answer the question.

15 A I never said that I told him how to do it. I
16 gave them suggestions of how to do things.

17 Q The business that you're referring to, the Yucca
18 Valley restaurant, is that located in California?

19 A Yes.

20 Q And it's located in the United States, right?

21 A Yes.

22 Q And it was located so close that you were
23 actually taking supplies to that restaurant for more than
24 six years; isn't that correct?

25 A It would take me five hours, more than five

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1 hours, six hours, to go back and forth every day over
2 there.

3 Q So before you said that the restaurant wasn't
4 worth anything, yet you were traveling or someone was
5 traveling five hours once a week over a six-year period to
6 deliver meat, tortillas and vegetables; is that right?

7 A Correct.

8 Q When the El Cajon restaurant opened, it had the
9 California Burrito on the menu, right?

10 A Correct.

11 Q And when the El Cajon restaurant opened, it had
12 the same menu items as the Rosecrans location, right?

13 A It had the menu that we had already designed,
14 which was totally different from the menu that we started
15 with.

16 Q Did your father ever object to the way that you
17 changed the menu?

18 A No.

19 Q So after you changed the menu to which your
20 father did not object, is it true that you at the Rosecrans
21 location had the same identical menu items as the El Cajon
22 location when it opened?

23 A Correct, because I established the restaurant in
24 El Cajon and I made the menu in El Cajon for the restaurant
25 in El Cajon.

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1 Q Do you, as you sit here today, own any part of
2 the El Cajon restaurant?

3 A Well, if the contract hasn't run out, months
4 before I was still named in the contract in the restaurant
5 in El Cajon. I think that is part of a business.

6 Q When you say you were named in the contract, are
7 you referring to serving as a guarantor on a lease?

8 A Correct.

9 Q So are you telling me that because you're a
10 guarantor on a lease, that makes you feel like an owner of
11 the business?

12 A Not owner, but, yes, that I have rights over that
13 business because I established it.

14 Q Okay. So you would agree, then, that the person
15 that establishes the business has the rights to it?

16 A As long as he doesn't sell it, yes.

17 Q But you don't own the El Cajon restaurant?

18 A No, I'm not an owner.

19 Q And your father no longer owns the Rosecrans
20 restaurant?

21 A Correct.

22 Q But your father established the Rosecrans
23 restaurant, correct?

24 A Yes, I bought it from him.

25 Q Who is the first person among all of you, you,

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1 Arturo Santana Lee, to use the words "Santana's Mexican
2 Grill" on a restaurant?

3 A We registered the first name of Santana's Mexican
4 Grill in El Cajon in the 411 in El Cajon for Arturo, my
5 brother.

6 Q So when you registered the name "Santana's
7 Mexican Grill," you actually put down on the paperwork that
8 Arturo Santana would be the owner of that business; is that
9 right?

10 A Correct.

11 Q And to this day you have never changed the name
12 of the Rosecrans location to Santana's Mexican Grill, have
13 you?

14 A Correct.

15 Q In fact, you didn't use the name Santana's
16 Mexican Grill on a restaurant until July 1998 at the Midway
17 location; is that correct?

18 A Correct.

19 Q Did you ever ask your brother, Arturo Santana
20 Lee, to sign anything that indicated that you owned the
21 name Santana's Mexican Food or Santana's Mexican Grill?

22 A No, because Arturo -- you, as a lawyer, you
23 understand perfectly what it is -- it's your older brother.
24 Supposedly you have to help each other, but he only had
25 success. While he opened the restaurant -- while he had

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1 the restaurant, he had no problems. No. When he was
2 opening the restaurant, there was no problem. Everything I
3 said or said how it should be done would be done.

4 As soon as he took possession of the restaurant,
5 I couldn't tell him what to do or anything because he did
6 whatever he wanted to do.

7 Q And how soon after he took possession of the
8 restaurant did he start doing whatever he wanted to do?

9 A Well, it was gradual.

10 Q I don't know if it helps, but you testified
11 previously that you really only went there for the first
12 month.

13 Is that how long you were there before he started
14 doing whatever he wanted or was it longer than that?

15 A Since the beginning, you could say that. For
16 instance, he didn't include the flan. He included menudo.
17 He started to change everything, that's it, period.

18 Q But how soon after he took possession of the
19 restaurant did he start to change everything?

20 A One or two months later.

21 Q What efforts did you take in 1998 to control the
22 activities of the El Cajon restaurant?

23 A I talked to him. I talked to him.

24 Q Did he listen to you?

25 A He told me that he was going to do what I said,

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1 but he told me -- he told me that he was going to do what I
2 was saying, but he didn't do anything that I said. And
3 then he told me he was going to change the name.

4 Q Between 1997 and the present -- strike that.

5 So you agree, though, that the first use of the
6 words "Santana's Mexican Grill that you know of in
7 connection with the sale of Mexican food was at
8 411 Broadway in El Cajon, right?

9 A The name that I designed --

10 Q That's not the question. The question is where,
11 where were the words "Santana's Mexican Grill first used?

12 A In El Cajon under my orders.

13 Q But, again, at no time did you own any interest
14 as an owner in the El Cajon restaurant, correct?

15 MR. SANDSTRUM: Calls for a legal conclusion.

16 BY MS. ARMENTA:

17 Q You can answer the question.

18 A Can you repeat the question, please.

19 MS. ARMENTA: Could you read it back, Ms. Reporter?

20 (The record was read.)

21 THE WITNESS: Well, it was an understanding between
22 him and I that I was the owner of the name. If at that
23 moment you and I had asked him about that, he would have
24 said that I was the owner of the name definitely.

25 BY MS. ARMENTA:

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1 Q I'm not asking about who the owner of the name
2 was. That's what this litigation is about.

3 I'm asking you who owned the restaurant. So my
4 question for you is, did you at any time own any interest
5 as an owner in the business located at the El Cajon
6 restaurant?

7 A Your question is did I have interest in that
8 restaurant?

9 Q No. Let's put aside the name. Aside from the
10 name, which the Trademark board will decide who owns, do
11 you own the business or have you ever owned it at El Cajon?

12 MR. SANDSTRUM: I'm going to object because I don't
13 think the Trademark Office will decide who owns the name
14 but will decide whether or not it is registerable, but go
15 ahead.

16 MS. ARMENTA: That's okay. I think he already
17 answered the question early this morning. Let's move on.

18 Q You've been the president of Santanas Grill,
19 Inc., the corporation, since it was first formed in 1993,
20 correct?

21 MS. VALLARTA-SANTANA: '98.

22 MS. ARMENTA: '98.

23 THE WITNESS: Correct.

24 BY MS. ARMENTA:

25 Q And you are aware, are you not, that in

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1 connection with applications to the United States Patent
2 and Trademark Office that your wife signed certain
3 declarations, yes?

4 A Yes.

5 Q Are you aware that in one of those applications
6 Santanas Grill, Inc., the corporation, claimed first use of
7 the words "Santana's Mexican Grill as of July 1998?

8 A Yes.

9 Q And you're aware in connection with that same
10 application, Santanas Grill failed to disclose that the
11 actual first use of the words "Santana's Mexican Grill was
12 in 1997, correct?

13 A Correct.

14 Q Now I want to turn to the sale of the Yucca
15 Valley restaurant.

16 Did you participate --

17 A I don't know anything about that sale. I didn't
18 sell it.

19 Q That was my question. Do you know anything about
20 the terms of the sale between your father and Arturo
21 Castaneda and the Yucca Valley restaurant?

22 A The only thing I know is that he sold the name to
23 me first.

24 Q When you say "he," you mean your father?

25 A Arturo Santana Gallego.

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1 Q So are you saying that when Arturo Santana
2 Gallego sold you the name -- was that at the same time he
3 sold you the Rosecrans location?

4 A No.

5 Q He sold you the name at a different time?

6 A Yes.

7 Q When did he sell you the name?

8 A '93 -- '92, '93.

9 Q Is there any document that reflects the sale of
10 the name that you're aware of?

11 A No.

12 Q He sold it to you for what? What did you pay
13 him?

14 A \$40,000.

15 Q Was that separate from the money that you paid
16 for the business or was that the same \$40,000 we already
17 discussed?

18 A It's the same.

19 Q So we'll call it the \$40,000 transaction by which
20 you acquired ownership of the Rosecrans restaurant.

21 THE INTERPRETER: Maybe there was a mistake from the
22 interpreter. I said "property deed," and he says there's
23 no property deed.

24 MS. ARMENTA: I didn't say "property deed."

25 Could the reporter read back the question and

Abelardo Santana

1 we'll have a reinterpretation?

2 (The record was read.)

3 THE WITNESS: It's the same.

4 MS. ARMENTA: Was there another question?

5 (The record was read.)

6 THE WITNESS: And the name.

7 BY MS. ARMENTA:

8 Q But that was all at the same time, right?

9 A Correct.

10 Q And at that time your father continued to own the
11 Yucca Valley restaurant with the same name, right?

12 A Correct.

13 MS. ARMENTA: I have no further questions.

14 MR. SANDSTRUM: Take a break?

15 MS. ARMENTA: Sure.

16 (A recess was taken.)

17 MR. SANDSTRUM: Let's go on the record. It's my
18 understanding we have a trial March 10th.

19 MS. ARMENTA: It's scheduled March 10 and scheduled to
20 be a two-week trial. I don't expect it to settle.

21 MR. SANDSTRUM: My concern is I would like to bring
22 back Claudia and Arturo Santana Lee. The dates you're
23 available are the 24th to the end of March?

24 MS. ARMENTA: Given that I'm unavailable for two
25 weeks, I would have no objection to stipulating to extend

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1 your testimonial period by an additional two weeks and work
2 on scheduling it during that time period.

3 MR. SANDSTRUM: We can talk about that. The reason
4 why I brought up Easter is the fact that if I call a couple
5 other witnesses and it's Easter break, I might have a hard
6 time getting them to show up, so we might have to extend
7 the date another two weeks for scheduling issues.

8 MS. ARMENTA: You know, Mike, I'm not going to have
9 any issue in scheduling witnesses outside the period, as
10 long as we might have to slide the other dates that follow
11 it, because then my rebuttal period might need to be slid,
12 so I will be very accommodating in terms of dates as long
13 as it's quid pro quo.

14 MR. SANDSTRUM: The dates before March, you're
15 unavailable from March 1st to the 22nd?

16 MS. ARMENTA: March 10th.

17 MR. SANDSTRUM: If I need to bring a witness in early
18 March for one day -- we'll work that out later, but I just
19 want to make sure I'm not locked up at the end.

20 MS. ARMENTA: Can you do it in L.A.?

21 MR. SANDSTRUM: We do have a Woodland Hills office.
22 Yeah, I can do that.

23 MS. ARMENTA: I'll work with you.

24 MR. SANDSTRUM: Okay, great.

25 THE REPORTER: Off the record?

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1 MR. SANDSTRUM: Yes.

2 MS. ARMENTA: Let me put one more thing on the record.

3 It's come to my attention that the stipulation we
4 entered into yesterday may not be completely consistent
5 with the rules in terms of testimonial depositions, so I'm
6 going to go over the rules with Mr. Sandstrum.

7 Of course, our mutual intent is to comply in all
8 possible respects with the rules, and myself being
9 unfamiliar with the process, we're going to read the rules
10 now and see what we can do to amend our stipulation from
11 yesterday.

12 THE REPORTER: Off the record?

13 MS. ARMENTA: Off.

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

15 MS. ARMENTA: Same stipulation and reserve the right
16 to amend.

17 MR. SANDSTRUM: To comply with the Trademark Office.

18

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

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

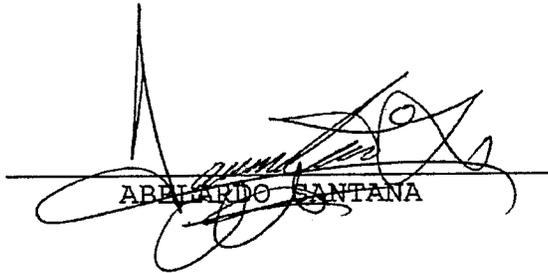
24 The court reporter will prepare the original
25 transcript and provide it to Mr. Sandstrum within 30 days.

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Declaration Under Penalty of Perjury

I, ABELARDO SANTANA, 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 20 day of May,
2008, at San Diego, California.
(city) (state)


ABELARDO SANTANA

Abelardo Santana

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Declaration Under Penalty of Perjury

I, ABELARDO SANTANA, 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)

ABELARDO SANTANA

Abelardo Santana

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF ORANGE)

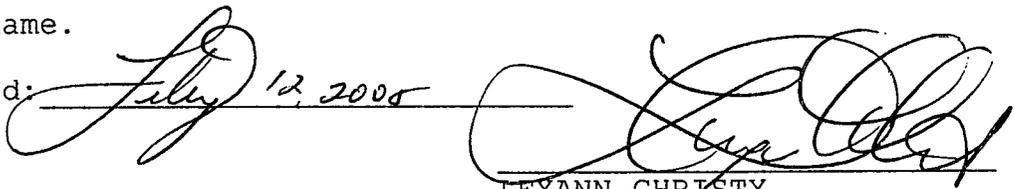
4 I, LEXANN CHRISTY, CSR No. 7932, in and for the
5 state of California, do hereby certify:

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

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

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

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

23 Dated: July 12, 2005
24 
25 LEXANN CHRISTY
CSR NO. 7932

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4

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.

5

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

10

11

Executed this _____ day of _____,

12

20____, at _____, California.

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Interpreter

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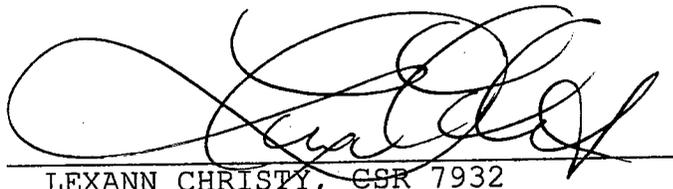
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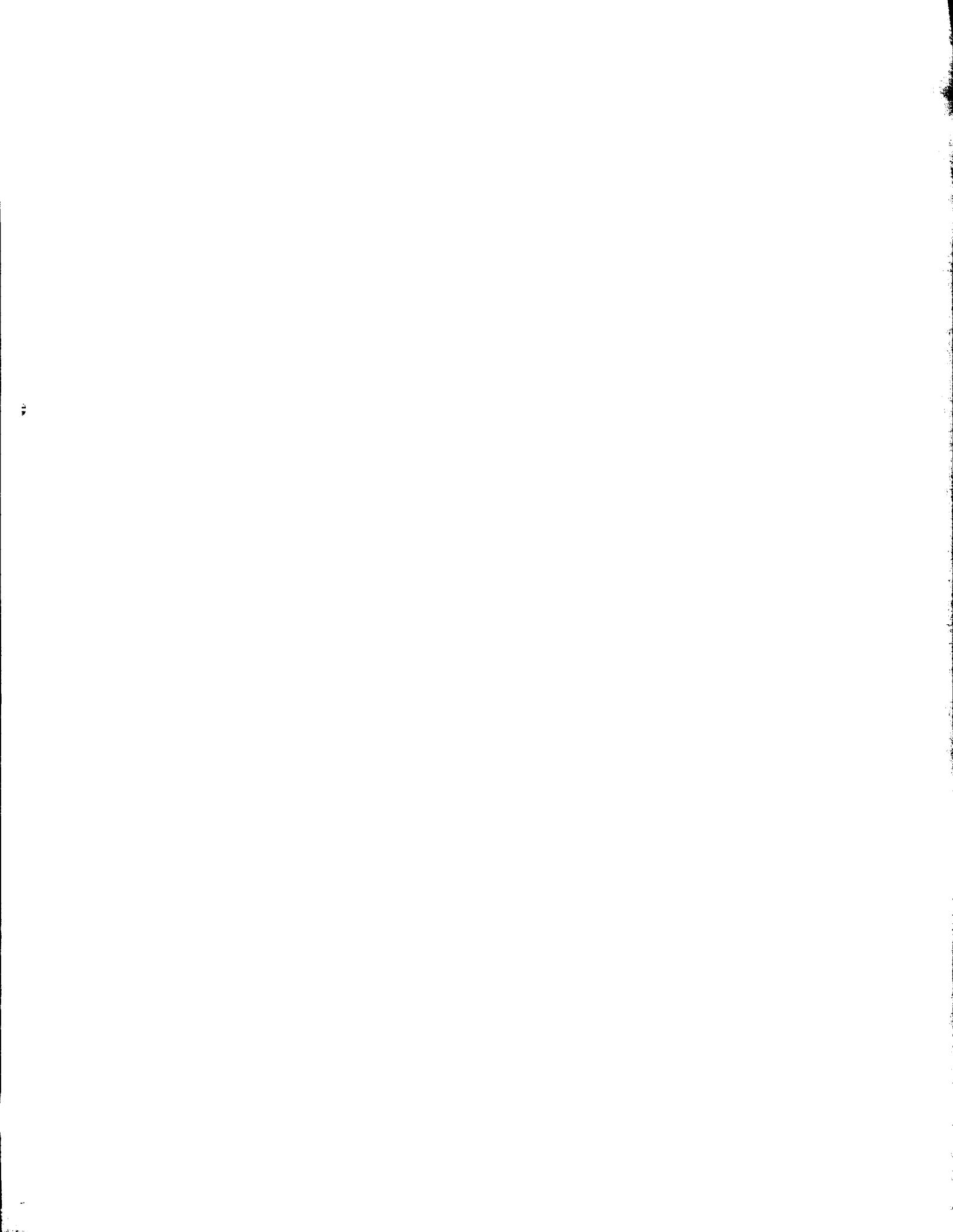
1 REPORTER'S CERTIFICATION OF CERTIFIED COPY

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

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

12
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14 Dated: July 12, 2008

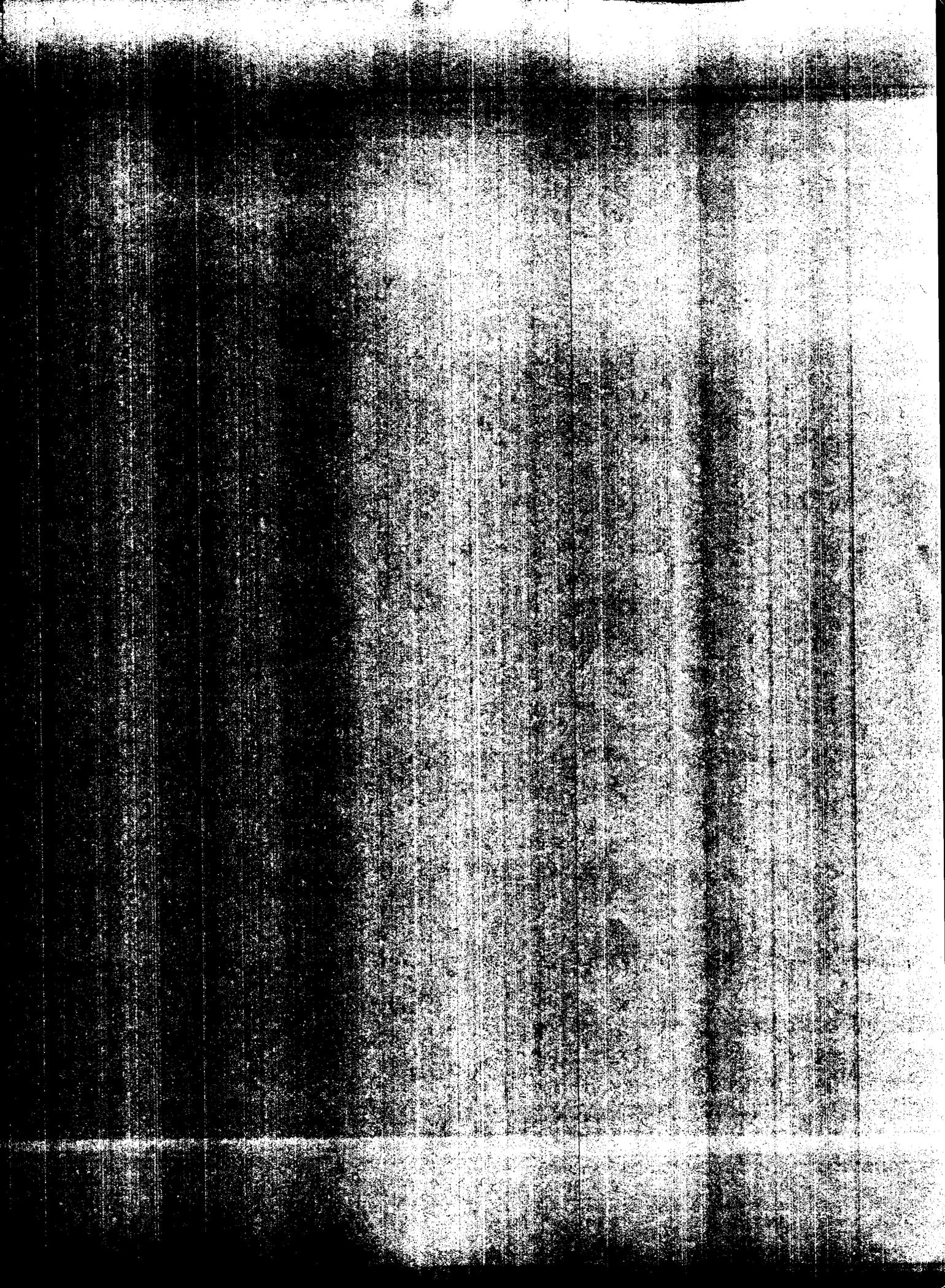
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Trial Deposition

Abelardo Santana Lee 2

(Cited as “Abelardo SL 2”)

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

ARTURO SANTANA GALLEGO,)	
)	
PETITIONER,)	
)	
VS.	)	CANCELLATION NOS.
	)	(CONSOLIDATED)
SANTANA'S GRILL, INC.,	)	92043152
	)	92043160
REGISTRANT.	)	92043175
)	

THE DEPOSITION OF ABELARDO SANTANA, TAKEN ON
BEHALF OF REGISTRANT, AT BREMER, WHYTE, BROWN & O'MEARA,
510 WEST BROADWAY, SUITE 1700, SAN DIEGO, CALIFORNIA, AT
10:00 A.M., THURSDAY, APRIL 3, 2008, BEFORE WINDY D.
ANDERSEN, C.S.R. NO. 12135, A CERTIFIED SHORTHAND
REPORTER FOR THE STATE OF CALIFORNIA.

1 APPEARANCES OF COUNSEL:

2

3

FOR PETITIONER:

THE ARMENTA LAW FIRM

4

BY: M. CRIS ARMENTA, ATTORNEY AT LAW

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FOR REGISTRANT:

BREMER, WHYTE, BROWN & O'MEARA

BY: MICHAEL A. SANDSTRUM, ESQUIRE

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949.221.1000

11

12

ALSO PRESENT:

ARTURO SANTANA GALLEGO

13

ARTURO CASTENADA

ARTURO SANTANA LEE

14

VIVIAN SALAZAR, INTERPRETER

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I N D E X

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WITNESS:

ABELARDO SANTANA

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VIVIAN SALAZAR,

The interpreter herein, was first duly affirmed to interpret the English language to the Spanish language and the Spanish language to the English language in this matter.

ABELARDO SANTANA,

The witness herein, having been first placed under oath, was examined and testified as follows:

EXAMINATION

BY MR. SANDSTRUM:

Q. Can you please state and spell your name for the record.

A. Abelardo Santana, A-B-E-L-A-R-D-O, S-A-N-T-A-N-A.

Q. You recall testifying in these proceedings in January of this year, correct?

A. Correct.

Q. The petitioner in these proceedings is your father, correct?

A. Correct.

Q. You're currently the president of a company called Santana's Grill, Inc.?

1 A. Yes.

2 Q. Are you the sole owner of that company?

3 A. Yes.

4 Q. Prior to you becoming the sole owner of
5 Santana's Grill, Inc., were there any other owners?

6 A. My ex-wife.

7 Q. What was her name; what is her name?

8 A. Claudia Vallarta.

9 Q. When did she cease being an owner of Santana's
10 Grill, Inc.?

11 A. When did she what?

12 Q. When did she stop being an owner of Santana's
13 Grill, Inc.?

14 A. When we divorced.

15 Q. When was that?

16 A. It was exactly -- approximately five months
17 ago.

18 Q. Claudia Vallarta-Santana, does she help you
19 out with books or documents, bookkeeping currently?

20 A. She was the vice president, and she would take
21 care of the bookkeeping, accounting, credits, and
22 anything that had to do with administration.

23 Q. Does she still help you out currently today
24 with bookkeeping and record keeping?

25 A. Minimal.

1 Q. Have you been the president and owner of
2 Santana's Grill, Inc. since it incorporated in April of
3 1998?

4 A. Correct, yes.

5 Q. Prior to the incorporation of Santana's Grill,
6 Inc., did you own any Mexican restaurants, businesses
7 with your ex-wife, Claudia Vallarta-Santana, as a
8 husband-and-wife partnership?

9 A. Yes.

10 Q. How many Mexican restaurants that you use
11 either the name Santana's Mexican Food or Santana's
12 Mexican Grill does Santana's Grill, Inc. own or license
13 today?

14 A. Seven.

15 Q. From the time you started or first owned your
16 first Santana's Mexican Food restaurant until today,
17 what were your job responsibilities with respect to
18 those seven restaurants?

19 A. To oversee the operations, the quality, the
20 uniformity, the recipes. Everything that has to do with
21 all of them being the same and to maintain quality and
22 good service.

23 Q. Do you have any plans or does your company
24 have any plans to continue to expand your Mexican
25 restaurant businesses called Santana's Mexican Food or

1 Santana's Mexican Grill?

2 A. If the appropriate opportunities arise or
3 arrive, yes.

4 Q. Is your company, Santana's Grill, Inc., the
5 owner of three federal servicemark registrations which
6 are the subject of these cancellation proceedings?

7 A. Yes.

8 Q. Does your father have any control over any
9 aspect of how you run your seven Mexican restaurants
10 called Santana's Mexican Food or Santana's Mexican
11 Grill?

12 A. No.

13 Q. Who has controlled the manner of operations of
14 Santana's Grill, Inc.'s seven Mexican restaurants that
15 you testified to earlier?

16 A. I do.

17 Q. Is it your understanding that your father
18 filed the incident cancellation proceedings with the
19 trademark office in response to your company's,
20 Santana's Grill, Inc., trademark lawsuit that you filed
21 against various third parties?

22 MS. ARMENTA: Objection. Calls for
23 speculation.

24 THE WITNESS: I have no way of knowing what he
25 was thinking about.

1 BY MR. SANDSTRUM:

2 Q. Did you file -- did your company file a
3 trademark litigation against your brother and others
4 before your father filed the incident cancellation
5 proceedings?

6 A. Yes.

7 Q. When did you first become an owner of a
8 Santana's Mexican Food restaurant?

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

11 THE WITNESS: Can I answer?

12 BY MR. SANDSTRUM:

13 Q. Yes.

14 A. I bought the name and the restaurant from him
15 in 19 -- in January of 1992.

16 Q. When you say "from him," who are you referring
17 to?

18 A. My father.

19 Q. I'm going to mark as Respondent's Exhibit 10
20 next in line a one-page document entitled "Reporting
21 Change in Ownership of Business Taxes Section. City of
22 San Diego." Dated January 21, 1992.

23 (Exhibit No. 10 was marked for
24 identification and attached hereto.)

25 BY MR. SANDSTRUM:

1 Q. Are you familiar with the signature at the
2 bottom?

3 A. My father's signature.

4 MS. ARMENTA: What number did you mark that
5 as?

6 MR. SANDSTRUM: No. 10, Respondent's No. 10.

7 MS. ARMENTA: Thank you.

8 BY MR. SANDSTRUM:

9 Q. Is it your understanding this is a true and
10 correct copy of the form that you and/or your wife,
11 Claudia Vallarta-Santana, filed with the City of San
12 Diego in January of 1992?

13 A. Yes.

14 MS. ARMENTA: May I?

15 MR. SANDSTRUM: Yeah.

16 Q. I'm going to mark as next in line Respondent's
17 No. 11, Exhibit 11 is a one-page document dated
18 October 11, 1991.

19 (Exhibit No. 11 was marked for
20 identification and attached hereto.)

21 BY MR. SANDSTRUM:

22 Q. At the very bottom, is that your signature at
23 the very bottom?

24 A. Yes.

25 Q. Is that your ex-wife's signature at the

1 bottom?

2 A. Yes.

3 Q. Can you tell me what this document is?

4 A. It's a transferring of the contract for
5 1480 Rosecrans. It was the rental contract.

6 Q. Okay. Now, when you purchased the -- what's
7 the address of the restaurant that you first obtained
8 ownership of; do you know the address? What is that
9 address?

10 A. Yes. 1480 Rosecrans.

11 Q. From here on out I'm going to call that
12 restaurant the Rosecrans restaurant, okay?

13 A. Very well.

14 Q. Now, when you purchased that Rosecrans
15 restaurant in January of 1992, was it your understanding
16 that you bought not only your father's business but the
17 rights to the name "Santana's Mexican Food"?

18 INTERPRETER: I'm sorry. The interpreter
19 requests that you slow down just a little bit.

20 MR. SANDSTRUM: Absolutely. I'll repeat the
21 question.

22 Q. When you purchased the Rosecrans restaurant in
23 January of 1992, was it your understanding that you
24 bought not only the restaurant business but the rights
25 to the name "Santana's Mexican Food"?

1 A. Yes. And I proved that when the contract --
2 there was only four months left on the contract, and I
3 was not going to pay \$40,000 for a contract that was
4 only going to be for four months.

5 Q. By "contract," what are you referring to?

6 A. The rental contract, the leasing contract.

7 Q. When you say \$40,000, did you pay \$40,000 in
8 cash for the Rosecrans restaurant?

9 A. No, no. That was a debt that my father had
10 that was \$20,000. And half of the apartments in Tecate.

11 Q. How much was that half worth?

12 A. Another 20-.

13 Q. At the time that you purchased the Rosecrans
14 restaurant, did your father say anything to you that he
15 was retaining any rights to the name "Santana's Mexican
16 Food"?

17 A. No.

18 Q. Did he say to you that he was retaining any
19 rights to the Rosecrans restaurant's reputation or good
20 will?

21 A. No.

22 Q. At any time after you purchased the Rosecrans
23 restaurant up until November 2003 when your company
24 filed a trademark lawsuit against third parties, did
25 your father ever oppose or object how you used -- how

1 you or your company used the "Santana's Mexican Food"
2 name?

3 A. No.

4 Q. Has your company, Santana's Grill, Inc., ever
5 been a licensed CA with your father with respect to the
6 name "Santana's Mexican Food"?

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

9 THE WITNESS: No.

10 BY MR. SANDSTRUM:

11 Q. How about as to the name "Santana's Mexican
12 Grill"?

13 MS. ARMENTA: Same objection.

14 THE WITNESS: No.

15 BY MR. SANDSTRUM:

16 Q. How about as to the name "Santana's"?

17 MS. ARMENTA: Same objection.

18 THE WITNESS: No.

19 MR. SANDSTRUM: Let's go off the record real
20 quick.

21 (Off the record.)

22 MR. SANDSTRUM: Back on the record.

23 Q. Has you or your company, Santana's Grill, Inc.
24 -- strike that.

25 After you acquired the Rosecrans restaurant,

1 what were your job responsibilities from 1992 to the
2 present with respect to that restaurant?

3 A. To control the operations, the quality, the
4 service, and the progress of the restaurant.

5 Q. When you initially purchased the Rosecrans
6 restaurant, were you and your ex-wife, Claudia
7 Vallarta-Santana, co-owners?

8 A. Yes.

9 Q. When you formed Santana's Grill, Inc., did
10 that become the owner of the Rosecrans restaurant?

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

13 THE WITNESS: Yes.

14 BY MR. SANDSTRUM:

15 Q. Since January of 1992, have you or your
16 company, Santana's Grill, Inc., continuously used the
17 "Santana's Mexican Food" name at the Rosecrans
18 restaurant to the present?

19 A. Santana's Mexican Food and Santana's Grill,
20 Inc.

21 Q. You use those names currently, correct?

22 A. Yes.

23 Q. From 1992 -- strike that.

24 When did you start using the name Santana's
25 Mexican Grill at the Rosecrans restaurant?

1 A. '98.

2 Q. Prior to that, did you continue to use the
3 name "Santana's Mexican Food"?

4 A. Yes.

5 Q. Since the time you acquired the Rosecrans
6 restaurant from your father in January of 1992 to the
7 time that Santana's Grill, Inc. filed a federal
8 trademark lawsuit in late 2003 against your brothers,
9 Arturo Santana Lee, Pedro Santana Lee and your father,
10 did your father ever object to how you or Santana's
11 Grill, Inc. used the name "Santana's Mexican Food" at
12 that restaurant?

13 A. No.

14 Q. Since the time you acquired the Rosecrans
15 restaurant in January of 1992 to the time your company,
16 Santana's Grill, Inc., filed a trademark lawsuit, did
17 your brother, Arturo Santana Lee, ever object as to the
18 manner and use of the "Santana's Mexican Food" name at
19 the Rosecrans restaurant?

20 A. No.

21 Q. At any time after you bought the Rosecrans
22 restaurant, did your father have any authority over how
23 you could operate the Rosecrans restaurant?

24 MS. ARMENTA: Objection. Calls for a legal
25 conclusion, irrelevant.

1 THE WITNESS: No.

2 BY MR. SANDSTRUM:

3 Q. At any time after you acquired the Rosecrans
4 restaurant, did your father ever attempt to inspect any
5 portion of that restaurant -- let me start over with
6 that question.

7 At any time after you acquired the Rosecrans
8 restaurant, did your father ever attempt to inspect any
9 portion of that restaurant for quality control purposes?

10 MS. ARMENTA: Objection. Calls for
11 speculation, vague as to time, irrelevant.

12 THE WITNESS: No.

13 BY MR. SANDSTRUM:

14 Q. Okay. At any time after you acquired the
15 Rosecrans restaurant, did your father ever place any
16 geographical restrictions as to where you could open a
17 new Santana's Mexican Food restaurant?

18 A. No.

19 Q. How about a Santana's Mexican Grill
20 restaurant?

21 MS. ARMENTA: Same objections to the preceding
22 question and this one.

23 THE WITNESS: No.

24 BY MR. SANDSTRUM:

25 Q. At any time after you acquired the Rosecrans

1 restaurant, did your father ever attempt to determine
2 what vendors were servicing that restaurant?

3 MS. ARMENTA: Objection. Vague as to time,
4 calls for speculation, irrelevant.

5 BY MR. SANDSTRUM:

6 Q. To your knowledge.

7 A. No.

8 Q. Did he ever attempt to determine what recipes
9 the Rosecrans restaurant was using, to your knowledge?

10 MS. ARMENTA: Same objections.

11 THE WITNESS: No.

12 BY MR. SANDSTRUM:

13 Q. How about what ingredients you were using at
14 that restaurant?

15 MS. ARMENTA: Same objections.

16 THE WITNESS: No.

17 BY MR. SANDSTRUM:

18 Q. How about what pricing you were using at that
19 restaurant?

20 MS. ARMENTA: Same objections.

21 THE WITNESS: No.

22 BY MR. SANDSTRUM:

23 Q. How about what advertising that you were
24 doing, if any, at that restaurant?

25 MS. ARMENTA: Same objections.

1 THE WITNESS: No.

2 BY MR. SANDSTRUM:

3 Q. How about what marketing efforts you were
4 engaging in with respect to the Rosecrans restaurant at
5 any time after you acquired the Rosecrans restaurant?

6 MS. ARMENTA: Same objections.

7 THE WITNESS: No.

8 BY MR. SANDSTRUM:

9 Q. At any time after you acquired the Rosecrans
10 restaurant, did your father ever make any demands on how
11 you or your company, Santana's Grill, Inc., could
12 operate the Rosecrans restaurant?

13 MS. ARMENTA: Same objections.

14 THE WITNESS: No.

15 BY MR. SANDSTRUM:

16 Q. At any time after you acquired the Rosecrans
17 restaurant, did your father ever place any restrictions
18 on how you or your company, Santana's Grill, Inc., could
19 use the "Santana's Mexican Food" name?

20 MS. ARMENTA: Same objections.

21 THE WITNESS: No.

22 BY MR. SANDSTRUM:

23 Q. At any time after you acquired the Rosecrans
24 restaurant, did your father ever make any demands as to
25 how you could operate the Rosecrans restaurant?

1 MS. ARMENTA: Same objections.

2 THE WITNESS: No.

3 BY MR. SANDSTRUM:

4 Q. At any time after you acquired the Rosecrans
5 restaurant, did your father ever implement any quality
6 control standards as to how you could run the Rosecrans
7 restaurant?

8 INTERPRETER: Could you slow down the
9 delivery, please.

10 BY MR. SANDSTRUM:

11 Q. Repeat the question. At any time after you
12 purchased the Rosecrans restaurant, did your father
13 implement any quality control standards as to how to run
14 the Rosecrans restaurant?

15 MS. ARMENTA: Same objections.

16 THE WITNESS: No.

17 BY MR. SANDSTRUM:

18 Q. At any time after you acquired the Rosecrans
19 restaurant, did your father -- strike that.

20 At any time after you acquired the Rosecrans
21 restaurant, did your father require that you or your
22 company, Santana's Grill, Inc., use certain vendors?

23 MS. ARMENTA: Same objections.

24 THE WITNESS: No.

25 BY MR. SANDSTRUM:

1 Q. Same question, how about suppliers?

2 MS. ARMENTA: Same objection.

3 THE WITNESS: No.

4 BY MR. SANDSTRUM:

5 Q. So was it your understanding that you could
6 use any vendor or supplier that you wanted at the
7 Rosecrans restaurant?

8 MS. ARMENTA: Same objection.

9 THE WITNESS: Yes, I could use anybody I
10 wanted to.

11 BY MR. SANDSTRUM:

12 Q. At any time after you purchased the Rosecrans
13 restaurant, did your father ever tell you that you or
14 your company had to use certain ingredients for your
15 food products?

16 A. No.

17 Q. At any time after you acquired the Rosecrans
18 restaurant, did your father ever tell you that you or
19 your company had to use certain recipes?

20 A. No.

21 MS. ARMENTA: Same objection.

22 BY MR. SANDSTRUM:

23 Q. At any time after you acquired the Rosecrans
24 restaurant, did your father ever tell you that you or
25 your company had to use certain menu items?

1 A. No.

2 Q. At any time after you acquired the Rosecrans
3 restaurant, did your father ever tell you that you or
4 your company, Santana's Grill, Inc., had to use certain
5 pricing?

6 MS. ARMENTA: Same objection. And asked and
7 answered.

8 THE WITNESS: No.

9 BY MR. SANDSTRUM:

10 Q. At any time after you acquired the Rosecrans
11 restaurant, did your father tell you that your
12 restaurant, the Rosecrans restaurant, had to have a
13 certain appearance?

14 MS. ARMENTA: Same objections. Lack of
15 foundation, irrelevant, calls for speculation.

16 THE WITNESS: No.

17 BY MR. SANDSTRUM:

18 Q. At any time after you acquired the Rosecrans
19 restaurant, did your father tell you that the Rosecrans
20 restaurant -- strike that.

21 At any time after you acquired the Rosecrans
22 restaurant, did your father ever prohibit certain types
23 of advertisement of the "Santana's Mexican Food" name?

24 MS. ARMENTA: Objection. Irrelevant.

25 THE WITNESS: No.

1 BY MR. SANDSTRUM:

2 Q. At any time after you acquired the Rosecrans
3 restaurant, did your father have any say in how the
4 Rosecrans restaurant -- strike that question.

5 At any time after you acquired the Rosecrans
6 restaurant, did your father have any say in what you
7 could sell at the Rosecrans restaurant?

8 MS. ARMENTA: Objection. Calls for a legal
9 conclusion, irrelevant.

10 THE WITNESS: No.

11 BY MR. SANDSTRUM:

12 Q. Did he ever tell you what -- after you
13 acquired the Rosecrans restaurant, did your father ever
14 tell you what you had to sell at the Rosecrans
15 restaurant?

16 MS. ARMENTA: Objection. Irrelevant, lacks
17 foundation, vague as to time.

18 BY MR. SANDSTRUM:

19 Q. It's at any time after you purchased the
20 Rosecrans restaurant.

21 MS. ARMENTA: It's a long period of time.

22 THE WITNESS: No.

23 BY MR. SANDSTRUM:

24 Q. At any time after you acquired the Rosecrans
25 restaurant, did your father have the right to tell you

1 how to operate that restaurant?

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

4 THE WITNESS: No.

5 May -- can I speak with him in private?

6 MR. SANDSTRUM: Yeah. We can take a break.

7 THE WITNESS: Two minutes only.

8 MS. ARMENTA: That's fine.

9 (Off the record.)

10 MR. SANDSTRUM: Let's go back on the record.

11 Q. At any time after you purchased the Rosecrans
12 restaurant in January 1992, has your father inspected
13 the kitchen of the Rosecrans restaurant for quality
14 control purposes?

15 MS. ARMENTA: Objection. Calls for
16 speculation, irrelevant.

17 THE WITNESS: No.

18 BY MR. SANDSTRUM:

19 Q. At any time after you acquired the Rosecrans
20 restaurant -- strike that question.

21 Since the time you had -- since the time you
22 purchased the Rosecrans restaurant, are you the one that
23 dictates quality control standards for that restaurant?

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

1 THE WITNESS: Yes.

2 BY MR. SANDSTRUM:

3 Q. Same question, are you the one that dictates
4 the standards by which that restaurant is run or
5 operated?

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

8 THE WITNESS: Yes.

9 BY MR. SANDSTRUM:

10 Q. Since you and Claudia Santana acquired the
11 Rosecrans restaurant, have you and Claudia Santana,
12 until the time of your recent divorce, made all of the
13 final business decisions relative to quality control?

14 MS. ARMENTA: Objection. Calls for a legal
15 conclusion, leading.

16 THE WITNESS: Yes.

17 BY MR. SANDSTRUM:

18 Q. How about marketing efforts?

19 MS. ARMENTA: Objection. Leading.

20 THE WITNESS: Yes.

21 BY MR. SANDSTRUM:

22 Q. Since the time you and Claudia Santana
23 acquired the Rosecrans restaurant, who has made all the
24 final business decisions relative to quality control
25 with respect to the Rosecrans restaurant?

1 A. I have.

2 Q. How about marketing efforts?

3 A. Between us both.

4 Q. By "us both," who do you mean?

5 A. My ex-wife, Claudia, and myself.

6 Q. How about budgeting?

7 A. The same, Claudia and -- Claudia, ex-wife, and
8 myself.

9 MS. ARMENTA: Belated objection. Irrelevant.

10 BY MR. SANDSTRUM:

11 Q. How about with respect to the advertising for
12 the Rosecrans restaurant?

13 MS. ARMENTA: Same objection.

14 THE WITNESS: The same, Claudia and I. When
15 we were married, we would do all that together.

16 BY MR. SANDSTRUM:

17 Q. How about with decisions relative to menu
18 items?

19 A. I will take into account her opinion.

20 Q. By "her," you're referring to Claudia?

21 A. Claudia.

22 Q. How about pricing of menu items?

23 A. The same, we would consult each other.

24 Q. What about the food used in products?

25 A. Somewhat.

1 Q. "Somewhat," what do you mean by that?

2 A. She also had -- Claudia would also somewhat
3 weigh in on those decisions.

4 Q. How about the recipes for the food products?

5 A. Also, she also weighed in on any of the
6 decisions we would make.

7 Q. How about how the Rosecrans restaurant looked,
8 its appearance?

9 A. No, she had nothing to do with that. I was
10 the one in charge of that.

11 Q. How about what type of company or restaurant
12 logos do you use?

13 A. The designs of the logo and things like that,
14 she would do that.

15 Q. Did you have any final decision as to whether
16 or not that logo should be used at your Rosecrans
17 restaurant?

18 A. Yes.

19 Q. Now, does your company, Santana's Grill, Inc.,
20 use a restaurant logo for the Rosecrans restaurant?

21 A. Yes.

22 Q. How about for your other seven restaurants?

23 A. The same, we would use the same.

24 Q. Do you know when you first started using a
25 restaurant logo for your Santana's Mexican Food or

1 Santana's Mexican Grill restaurants?

2 INTERPRETER: I'm sorry. Could you repeat the
3 question, please.

4 BY MR. SANDSTRUM:

5 Q. When did you start using a company logo, a
6 restaurant logo for any of your Santana's Mexican Food
7 or Santana's Grill restaurants?

8 A. '93.

9 MS. ARMENTA: Objection. Vague as to time,
10 vague as to the term "used."

11 MR. SANDSTRUM: I'm going to mark as next in
12 line as Respondent's Exhibit 12, six pages of what
13 appear to be a logo with the name "Santana's Mexican
14 Grill" sandwiched between a sawtooth pattern design.

15 (Exhibit No. 12 was marked for
16 identification and attached hereto.)

17 BY MR. SANDSTRUM:

18 Q. If I could have you look at the six pages and
19 tell me what those designs are.

20 A. These are the trademarks that we registered.

21 Q. Are those your company logos that you use at
22 all of your restaurants to this day?

23 A. Yes.

24 Q. Who created the logo that you see on the six
25 pages?

1 MS. ARMENTA: Objection. Calls for
2 speculation, lacks foundation.

3 BY MR. SANDSTRUM:

4 Q. Do you know who created the logo you see on
5 those six pages, Respondent's Exhibit 12?

6 A. Yes.

7 Q. Who was that?

8 A. Claudia and Maite.

9 Q. What was the first Santana's Mexican Food
10 restaurant that utilized any of the logos that you see
11 on Respondent Exhibit 12?

12 MS. ARMENTA: Objection. Calls for
13 speculation.

14 THE WITNESS: Are you talking about the logo
15 or we're talking about "Mexican Grill"?

16 BY MR. SANDSTRUM:

17 Q. The whole logo as you see on Respondent's
18 Exhibit 12.

19 A. The one that was used first was Arturo on
20 Broadway.

21 COURT REPORTER: Wait, wait. I'm waiting for
22 her to finish translating.

23 (Record read.)

24 THE WITNESS: Correct.

25 BY MR. SANDSTRUM:

1 Q. Before the logo contained the words "Santana's
2 Mexican Grill," did it contain the words "Santana's
3 Mexican Food"?

4 MS. ARMENTA: Objection. Confusing, leading,
5 and vague as to restaurant location.

6 THE WITNESS: Yes. With Santana's Mexican
7 Food it was first used in Rosecrans.

8 BY MR. SANDSTRUM:

9 Q. Who created the name "Santana's Mexican
10 Grill"?

11 A. I did (In English).

12 Q. Do all of your company's restaurants,
13 Santana's Grill, Inc., utilize the logo that you see on
14 Respondent's Exhibit 12 and any of the restaurants that
15 it owns --

16 INTERPRETER: I'm sorry?

17 MR. SANDSTRUM: I'll start over.

18 INTERPRETER: Say that again, please.

19 BY MR. SANDSTRUM:

20 Q. Do all of the Santana's Mexican Food
21 restaurants that your company, Santana's Grill, Inc.,
22 owns or licenses use the logo that are shown on
23 Respondent Exhibit 12?

24 MS. ARMENTA: Objection. Leading.

25 THE WITNESS: Yes.

1 BY MR. SANDSTRUM:

2 Q. Do they also have a logo that is similar to
3 Respondent Exhibit 12 that says "Santana's Mexican
4 Food"?

5 MS. ARMENTA: Objection. Leading.

6 THE WITNESS: Yes.

7 BY MR. SANDSTRUM:

8 Q. When did you decide to start using the name
9 "Santana's Mexican Grill" in any of your Mexican
10 restaurants?

11 MS. ARMENTA: Objection. Lacks foundation,
12 vague as to "you."

13 THE WITNESS: When we were constructing the
14 restaurant at 3792 Midway, it was in '92 -- no, '97.
15 Excuse me.

16 BY MR. SANDSTRUM:

17 Q. After you purchased the Rosecrans restaurant,
18 what was the next Mexican restaurant, if any, that you
19 opened?

20 A. After?

21 Q. After Rosecrans.

22 A. After Rosecrans I open Morena.

23 Q. What's the address of Morena?

24 A. 5025 Morena Boulevard. I opened it in '93.
25 Yes, '93.

1 Q. What did you name that restaurant?

2 A. Santana's Mexican Food.

3 Q. I'm going to mark as next in line

4 Respondent's 13.

5 INTERPRETER: This is 12.

6 MR. SANDSTRUM: It's entitled "Fictitious
7 business name statement for 1525 Morena Boulevard."

8 (Exhibit No. 13 was marked for
9 identification and attached hereto.)

10 BY MR. SANDSTRUM:

11 Q. Do you recognize the signature at the bottom
12 of that document?

13 A. That's Claudia's signature.

14 Q. Are you familiar with Claudia's signature?

15 A. Yes.

16 Q. Does that refresh your recollection as to when
17 the Morena Boulevard restaurant was opened?

18 A. Yes. It says '94.

19 Q. Is Respondent Exhibit 12 a true and correct
20 copy of a fictitious business name statement that was
21 filed on behalf of Santana's Grill, Inc. on June 24,
22 2003?

23 A. Correct.

24 MS. ARMENTA: May I?

25 MR. SANDSTRUM: Yeah.

1 Q. Now, when you opened the Morena restaurant,
2 who owned that restaurant?

3 A. Claudia and me.

4 Q. As a husband-and-wife partnership?

5 A. As a couple.

6 Q. Once you incorporated into Santana's Grill,
7 Inc., did that company become the owner of the Morena
8 Boulevard restaurant?

9 A. Correct.

10 MS. ARMENTA: Objection. Calls for a legal
11 conclusion, lacks foundation.

12 BY MR. SANDSTRUM:

13 Q. Since the time you opened the Morena Boulevard
14 restaurant, have you or your company, Santana's Grill,
15 Inc., continuously used the "Santana's Mexican Food"
16 name at that restaurant until the present?

17 A. Yes.

18 Q. Since you opened the Morena Boulevard
19 restaurant to the time that your company, Santana's
20 Grill, Inc., filed the federal trademark lawsuit against
21 your brothers, Arturo Santana Lee, Pedro Santana Lee,
22 and your father, did your father ever object or oppose
23 to how you used the "Santana's Mexican Food" name at
24 that restaurant?

25 MS. ARMENTA: Objection. Irrelevant.

1 THE WITNESS: No.

2 BY MR. SANDSTRUM:

3 Q. At the time you opened the Morena Boulevard
4 restaurant to the time your company filed a federal
5 trademark lawsuit in late 2003, did your brother, Arturo
6 Santana Lee, ever object to the use of the "Santana's
7 Mexican Food" name at the Morena Boulevard restaurant?

8 MS. ARMENTA: Objection. Irrelevant and
9 leading.

10 THE WITNESS: No.

11 BY MR. SANDSTRUM:

12 Q. At any time after you opened the Morena
13 Boulevard restaurant, did your father ever attempt to
14 inspect, to your knowledge, any portion of that
15 restaurant for quality control purposes?

16 MS. ARMENTA: Objection. Irrelevant, calls
17 for speculation.

18 THE WITNESS: No.

19 BY MR. SANDSTRUM:

20 Q. At any time after you opened the Morena
21 Boulevard restaurant, did your father ever attempt to
22 determine what vendors were servicing that restaurant,
23 to your knowledge?

24 A. No.

25 MS. ARMENTA: Objection. Calls for

1 speculation and irrelevant.

2 BY MR. SANDSTRUM:

3 Q. It's going to be the same question, did your
4 father ever attempt to determine what recipes you were
5 using at that restaurant?

6 MS. ARMENTA: Objection. Calls for
7 speculation, irrelevant, and lacks foundation.

8 THE WITNESS: No.

9 BY MR. SANDSTRUM:

10 Q. Same question, did your father ever attempt to
11 determine what ingredients you were using at that
12 restaurant?

13 MS. ARMENTA: Same three objections.

14 THE WITNESS: No.

15 BY MR. SANDSTRUM:

16 Q. Same question, how about pricing?

17 A. No.

18 MS. ARMENTA: Same three objections.

19 BY MR. SANDSTRUM:

20 Q. Same question, how about advertising that you
21 were doing?

22 MS. ARMENTA: Same three objections.

23 THE WITNESS: No.

24 BY MR. SANDSTRUM:

25 Q. How about marketing efforts?

1 MS. ARMENTA: Same three objections.

2 THE WITNESS: No.

3 BY MR. SANDSTRUM:

4 Q. At any time after you opened the Morena
5 Boulevard restaurant, did your father ever make any
6 demands to you or your company as to how to operate that
7 restaurant?

8 MS. ARMENTA: Same three objections.

9 THE WITNESS: No.

10 BY MR. SANDSTRUM:

11 Q. At any time after you opened the Morena
12 Boulevard restaurant, did your father ever place any
13 restrictions on how you could use -- the manner in which
14 you could use the "Santana's Mexican Food" name?

15 MS. ARMENTA: Same objections. Could you read
16 back the question, please.

17 (Record read.)

18 MS. ARMENTA: Same objections. Calls for a
19 legal conclusion.

20 THE WITNESS: No.

21 BY MR. SANDSTRUM:

22 Q. At any time after you acquired -- strike that.
23 At any time after you opened the Morena
24 Boulevard restaurant, did your father ever make or place
25 any geographical restriction as to where you could open

1 additional Santana's Mexican Food restaurants?

2 A. No.

3 MS. ARMENTA: Same objections.

4 BY MR. SANDSTRUM:

5 Q. At any time after you opened the Morena
6 Boulevard restaurant, did your father ever tell you what
7 you had to sell at that restaurant?

8 MS. ARMENTA: Same objections.

9 THE WITNESS: No.

10 BY MR. SANDSTRUM:

11 Q. At any time after you opened the Morena
12 Boulevard restaurant, did your father ever implement any
13 quality control standards as to how to run the Morena
14 Boulevard restaurant?

15 MS. ARMENTA: Same objections.

16 THE WITNESS: No.

17 BY MR. SANDSTRUM:

18 Q. At any time after you opened the Morena
19 Boulevard restaurant, did your father tell you that you
20 or your company had to use certain vendors or suppliers?

21 MS. ARMENTA: Same objections, and asked and
22 answered on this entire line of questioning.

23 THE WITNESS: No.

24 BY MR. SANDSTRUM:

25 Q. At any time after you opened the Morena

1 Boulevard restaurant, did your father ever tell you that
2 you had to use certain ingredients for your food
3 products at that restaurant?

4 MS. ARMENTA: Same objections and asked and
5 answered.

6 THE WITNESS: No.

7 BY MR. SANDSTRUM:

8 Q. At any time after you opened the Morena
9 Boulevard restaurant, did your father ever tell you that
10 you had to use certain recipes for that restaurant?

11 MS. ARMENTA: Same objections.

12 THE WITNESS: No.

13 BY MR. SANDSTRUM:

14 Q. At any time after you opened the Morena
15 Boulevard restaurant, did your father ever tell you that
16 you had to use certain menu items at that restaurant?

17 MS. ARMENTA: Same objections.

18 THE WITNESS: No.

19 BY MR. SANDSTRUM:

20 Q. At any time after you opened the Morena
21 Boulevard restaurant, did your father ever tell you that
22 you had to use certain pricing at that specific
23 restaurant?

24 MS. ARMENTA: Same objections.

25 THE WITNESS: No.

1 BY MR. SANDSTRUM:

2 Q. At any time after you opened the Morena
3 Boulevard restaurant, did your father ever tell you that
4 your restaurant had to look a certain way?

5 MS. ARMENTA: Same objections. Leading.

6 THE WITNESS: No.

7 BY MR. SANDSTRUM:

8 Q. At any time after you opened the Morena
9 Boulevard restaurant, did your father ever prohibit that
10 restaurant from engaging in certain advertising in the
11 name "Santana's Mexican Food"?

12 MS. ARMENTA: Objection. Leading, asked and
13 answered, calls for a legal conclusion.

14 THE WITNESS: No.

15 BY MR. SANDSTRUM:

16 Q. At any time after you opened the Morena
17 Boulevard restaurant in 1994, did your father have any
18 say in how that restaurant could be operated?

19 MS. ARMENTA: Objection. Calls for a legal
20 conclusion, lacks foundation.

21 THE WITNESS: No.

22 BY MR. SANDSTRUM:

23 Q. At any time after you opened the Morena
24 Boulevard restaurant, did your father have any right to
25 tell you how to operate that restaurant?

1 MS. ARMENTA: Objection. Calls for a legal
2 conclusion, lacks foundation.

3 THE WITNESS: No.

4 BY MR. SANDSTRUM:

5 Q. At any time after you opened the Morena
6 Boulevard restaurant, did your father ever inspect the
7 kitchen of that restaurant for quality control purposes?

8 MS. ARMENTA: Objection. Calls for
9 speculation, irrelevant, lacks foundation.

10 THE WITNESS: No.

11 BY MR. SANDSTRUM:

12 Q. Since you opened the Morena Boulevard
13 restaurant, are you the one that dictates quality
14 control standards for that restaurant?

15 MS. ARMENTA: Objection. Leading.

16 THE WITNESS: Yes.

17 BY MR. SANDSTRUM:

18 Q. Who is the one who dictates quality control
19 standards -- strike that.

20 Who is the one who dictates operational
21 standards for the Morena Boulevard restaurant?

22 MS. ARMENTA: Objection. Vague as to time.

23 BY MR. SANDSTRUM:

24 Q. At any time --

25 A. I do.

1 Q. -- after he opened it.

2 A. I do.

3 Q. Since the time you and Claudia
4 Vallarta-Santana opened the Morena Boulevard restaurant,
5 have you made all the final business decisions with
6 regard to quality control issues relative to the Morena
7 Boulevard restaurant?

8 MS. ARMENTA: Objection. Leading.

9 THE WITNESS: Yes.

10 BY MR. SANDSTRUM:

11 Q. Since the time that you opened the Morena
12 Boulevard restaurant, who makes all the final business
13 decisions relative to quality control issues?

14 MS. ARMENTA: Objection. Leading and vague.

15 THE WITNESS: I do.

16 BY MR. SANDSTRUM:

17 Q. How about as to marketing issues?

18 MS. ARMENTA: Objection. Leading and vague.

19 THE WITNESS: I do.

20 BY MR. SANDSTRUM:

21 Q. Advertising, same answer?

22 MS. ARMENTA: Same objection.

23 THE WITNESS: Yes.

24 BY MR. SANDSTRUM:

25 Q. Budgeting?

1 A. If there is any (In English).

2 MS. ARMENTA: Same objection and irrelevant.

3 THE WITNESS: I do. I made the decisions.

4 BY MR. SANDSTRUM:

5 Q. How about as to menu items used at that
6 restaurant?

7 A. I would make those. I would make those
8 decisions.

9 Q. How about as to pricing of that restaurant of
10 food products?

11 MS. ARMENTA: Same objection and asked and
12 answered.

13 THE WITNESS: I do.

14 BY MR. SANDSTRUM:

15 Q. How about as to ingredients that you use at
16 that restaurant?

17 MS. ARMENTA: Same objection.

18 THE WITNESS: I would make the decisions.

19 BY MR. SANDSTRUM:

20 Q. How about as to recipes used at that
21 restaurant?

22 MS. ARMENTA: Same objections.

23 THE WITNESS: I would make the decisions.

24 BY MR. SANDSTRUM:

25 Q. How about as to any kind of logos that you

1 would use at that restaurant?

2 MS. ARMENTA: Same objections.

3 THE WITNESS: Well, there weren't any
4 decisions to make because the logo was already made and
5 that was that.

6 BY MR. SANDSTRUM:

7 Q. But if you wanted to use a different logo, you
8 could do so, right?

9 MS. ARMENTA: Objection. Calls for a legal
10 conclusion, improper hypothetical, leading, irrelevant.

11 THE WITNESS: If I wanted to do whatever I
12 wanted to do, I could do it because I created it.

13 BY MR. SANDSTRUM:

14 Q. Now, after you opened the Morena Boulevard
15 Santana's Mexican Food restaurant, what was the next
16 Mexican restaurant that you opened?

17 A. Midway.

18 MS. ARMENTA: Mike, if you're going to ask him
19 the exact same series of questions --

20 MR. SANDSTRUM: Yes, I am.

21 MS. ARMENTA: -- we can stipulate that it will
22 be the exact same questions and answers and I'll make
23 the exact same objections with the list of restaurants
24 and let's stipulate to that.

25 MR. SANDSTRUM: We can stipulate to that.

1 MS. ARMENTA: So stipulated.

2 MR. SANDSTRUM: The restaurants we are
3 stipulating to are?

4 MS. ARMENTA: The balance of the restaurants.

5 BY MR. SANDSTRUM:

6 Q. Let's go from here. After you opened the
7 Midway -- or the Morena Boulevard restaurant, the next
8 restaurant was the Midway restaurant, right?

9 A. Correct.

10 Q. What was the address for Midway?

11 A. 3742 Midway Drive.

12 Q. When, if you know, when did that restaurant
13 open?

14 A. In July of '98.

15 Q. What did you name that restaurant?

16 A. Santana's Mexican Grill.

17 Q. When did you -- you testified earlier that you
18 created the name "Santana's Mexican Grill," correct?

19 A. Yes.

20 Q. When did you create that name?

21 A. In '97 when we were in the process of opening
22 up the Midway one.

23 Q. To your knowledge, has your father ever used
24 the "Santana's Mexican Food" name associated with
25 Mexican restaurants?

1 A. Yes.

2 Q. What restaurant?

3 A. In Rosecrans.

4 Q. Santana's Mexican Grill.

5 A. Oh, no.

6 MS. ARMENTA: That wasn't the question. You
7 asked Mexican Food --

8 MR. SANDSTRUM: That's my mistake. Let me
9 read the question back.

10 Q. To your knowledge, has your father ever used
11 the "Santana's Mexican Grill" associated with Mexican
12 restaurants?

13 A. No.

14 MS. ARMENTA: Objection. Calls for a legal
15 conclusion, vague as to the term "used."

16 BY MR. SANDSTRUM:

17 Q. Since the time you opened the Midway Drive
18 restaurant called "Santana's Mexican Grill," have you or
19 your company, Santana's Mexican Grill (sic),
20 continuously used that name at that restaurant to the
21 present?

22 A. Yes.

23 MS. ARMENTA: Objection. Vague as to "you."
24 I think you misstated the name of the corporation, also.

25 BY MR. SANDSTRUM:

1 Q. Repeat the question. Since the time that you,
2 being the deponent here, opened the Midway Drive
3 restaurant, has that restaurant continuously used the
4 name "Santana's Mexican Food" or "Santana's Mexican
5 Grill" to the present?

6 A. Which store are you talking about again?

7 Q. Midway Drive.

8 A. Santana's Mexican Grill.

9 Q. Is that "yes" or "no"?

10 A. Yes.

11 MS. ARMENTA: Objection. Leading.

12 BY MR. SANDSTRUM:

13 Q. After the Midway restaurant was opened, what
14 was the next Mexican restaurant that you opened?

15 A. After Midway I opened San Marcos.

16 Q. What's the address of that restaurant?

17 A. 580 South Pacific, San Marcos.

18 Q. What did you name that restaurant?

19 A. Santana's Mexican Grill.

20 Q. Do you know when that restaurant opened?

21 A. That restaurant was opened 2003 -- no, no,
22 that's not right. I don't remember when it was opened.

23 Q. I'm going to mark as Respondent's

24 Exhibit 14 --

25 A. Excuse me. 2001.

1 Q. 2001. I'm still going to mark as Respondent's
2 Exhibit 14 a one-page document entitled "Fictitious
3 business name statement for 580 South Pacific,
4 San Marcos."

5 (Exhibit No. 14 was marked for
6 identification and attached hereto.)

7 BY MR. SANDSTRUM:

8 Q. Do you recognize the signature at the bottom
9 of that page?

10 A. Yes. It's my signature.

11 Q. Is it a true and correct copy of a fictitious
12 business name statement you filed with the County of San
13 Diego?

14 A. Yes.

15 Q. Since the time that you opened -- I'm going to
16 call the restaurant the San Marcos restaurant, okay. At
17 the time that you opened the San Marcos restaurant, has
18 that location continuously used the "Santana's Mexican
19 Grill" name to the present?

20 MS. ARMENTA: Objection. Leading.

21 THE WITNESS: Yes.

22 BY MR. SANDSTRUM:

23 Q. After the San Marcos restaurant, what is the
24 next restaurant that your company, Santana's Grill,
25 Inc., opened?

1 A. Washington.

2 Q. What's the address?

3 A. It's 719 West Washington.

4 Q. For the purpose of this testimony, I'm
5 referring to that as the Washington street restaurant,
6 okay?

7 A. Very well.

8 Q. What did you call that restaurant?

9 A. Santana's Mexican Grill.

10 Q. Do you know approximately when that restaurant
11 opened?

12 A. 2003.

13 Q. From the time you opened the Washington street
14 restaurant, has that location continuously used the name
15 "Santana's Mexican Grill" to the present?

16 MS. ARMENTA: Objection. Leading.

17 THE WITNESS: Outside it may say Santana's
18 Mexican Grill or Santana's Mexican Food, but all of them
19 have both names.

20 BY MR. SANDSTRUM:

21 Q. You've used both names from the time you
22 opened that location to the present?

23 MS. ARMENTA: Objection. Leading.

24 THE WITNESS: Correct, yes.

25 BY MR. SANDSTRUM:

1 Q. After the Washington street restaurant named
2 Santana's Mexican Grill was opened, what was the next
3 restaurant that you or your company, Santana's Grill,
4 opened?

5 MS. ARMENTA: Objection. Assumes facts not in
6 evidence.

7 BY MR. SANDSTRUM:

8 Q. Did you open another restaurant?

9 A. Yes.

10 MS. ARMENTA: Vague as to "you."

11 BY MR. SANDSTRUM:

12 Q. After your company, Santana's Grill, Inc.,
13 opened the Washington street restaurant in 2003, did
14 that company open another Mexican restaurant?

15 A. Yes. I opened 2303 Garnet Avenue, and I
16 opened it in 2004.

17 Q. What did you name that restaurant?

18 A. That, I don't remember. Outside it says
19 Santana's Mexican Food and inside it says Santana's
20 Mexican Grill.

21 Q. Since the time that your company, Santana's
22 Mexican Grill, Inc., opened the restaurant located at
23 2303 Garnet Avenue, San Diego, has that location
24 continuously used the "Santana's Mexican Food" name and
25 "Santana's Mexican Grill" name until the present?

1 A. Yes.

2 MS. ARMENTA: Objection. Leading.

3 BY MR. SANDSTRUM:

4 Q. After your company, Santana's Grill, Inc.,
5 opened up the restaurant on Garnet Avenue, did it open
6 another restaurant?

7 A. It's not opened yet, but everything is ready
8 and it will open next week. It's located at
9 12010 Scripps Summit.

10 Q. Are those all the restaurants that your
11 company currently owns or licenses that we talked about
12 today?

13 A. Correct, yes.

14 MR. SANDSTRUM: So, if you want to engage in
15 the stipulation mentioned earlier that the answers
16 relative to providing for Rosecrans, Midway, and Morena
17 are applicable to the restaurants that were just
18 mentioned, other than the one that has not opened yet?

19 MS. ARMENTA: So stipulated.

20 THE WITNESS: I didn't understand that. Could
21 you repeat that.

22 MR. SANDSTRUM: We are doing a stipulation.
23 Do you want to read that back to him.

24 THE WITNESS: Between you, okay.

25 (Record read.)

1 BY MR. SANDSTRUM:

2 Q. Since you purchased the Rosecrans restaurant
3 until today, has your father had any say in how you or
4 your company, Santana's Grill, Inc., operate any of
5 those restaurant locations that we have talked about
6 today?

7 MS. ARMENTA: Objection. Calls for a legal
8 conclusion and vague.

9 THE WITNESS: No.

10 BY MR. SANDSTRUM:

11 Q. Do all of the restaurants we talked about
12 today that Santana's Grill, Inc. either owns or operates
13 run in the same and uniform manner; are they run in the
14 same or uniform manner?

15 MS. ARMENTA: Objection. Leading, calls for a
16 legal conclusion.

17 THE WITNESS: We try to make them as uniform
18 as possible in the way that we put up the signs, the way
19 they're operated, the recipes, the decoration. We try
20 to make them similar as much as possible.

21 BY MR. SANDSTRUM:

22 Q. Are the menu items that you sell at any
23 restaurants that Santana's Grill, Inc. owns or licenses,
24 are they different or the same?

25 A. The same, exactly the same.

1 Q. Do any of the restaurants that we talked about
2 today, do their employees use uniforms?

3 A. Yes.

4 Q. Are they the same or different in each
5 restaurant?

6 A. They're the same.

7 Q. Do all the restaurants that we talked about
8 today utilize the same or different ingredients for the
9 food products?

10 A. Yes.

11 Q. "Yes" what?

12 A. They use the same products and ingredients for
13 the food.

14 Q. How about recipes?

15 A. The same.

16 Q. How about advertising and marketing?

17 MS. ARMENTA: Objection. Leading.

18 THE WITNESS: Yes.

19 BY MR. SANDSTRUM:

20 Q. Are all the restaurants we talked about today,
21 other than the one that has not been opened, are they
22 advertised on a website?

23 A. Yes.

24 MS. ARMENTA: Objection. Leading.

25 BY MR. SANDSTRUM:

1 Q. Do you advertise any of the restaurants we
2 talked about today on a website?

3 INTERPRETER: I'm sorry.

4 BY MR. SANDSTRUM:

5 Q. Do you advertise any of the restaurants you've
6 mentioned today on a website?

7 MS. ARMENTA: Objection. Leading.

8 THE WITNESS: Yes.

9 MR. SANDSTRUM: Mark as Respondent's Exhibit
10 15 a one-page document that says "Santana's Mexican
11 Grill."

12 (Exhibit No. 15 was marked for
13 identification and attached hereto.)

14 BY MR. SANDSTRUM:

15 Q. Are you familiar with that document?

16 A. Yes. It's one of the pages in the website.

17 Q. In Santana's Grill's website?

18 A. Yes.

19 MS. ARMENTA: Objection. Leading.

20 BY MR. SANDSTRUM:

21 Q. Whose website advertises Respondent's
22 Exhibit R 15?

23 A. Whose?

24 Q. Whose website is it?

25 A. Mine.

1 Q. By you, you mean Santana's Grill, Inc.?

2 A. Yes.

3 Q. How long has Santana's Grill, Inc. been
4 advertising its website on the Internet?

5 A. Minimum, eight to ten years.

6 Q. Let me mark as Respondent's Exhibit 16 --

7 MS. ARMENTA: May I have that?

8 MR. SANDSTRUM: -- three pages of color
9 photographs -- color photocopies of photographs. Ask
10 the witness to tell me what they are.

11 (Exhibit No. 16 was marked for
12 identification and attached hereto.)

13 THE WITNESS: The posters of people working
14 wearing their uniforms.

15 BY MR. SANDSTRUM:

16 Q. Are those the uniforms that Santana's Grill,
17 Inc. employees utilize at the restaurants?

18 A. Correct.

19 Q. I'm going to mark as Respondent Exhibit 17
20 five pages of color photocopies of photographs. Ask the
21 witness to tell me what these are.

22 (Exhibit No. 17 was marked for
23 identification and attached hereto.)

24 THE WITNESS: They are photographs of
25 Rosecrans.

1 MR. SANDSTRUM: Mark as Exhibit R --
2 Respondent's 18 additional color photocopies of
3 photographs. Ask the witness if he is familiar with the
4 photographs, and tell me what they are, if you know.

5 (Exhibit No. 18 was marked for
6 identification and attached hereto.)

7 THE WITNESS: They are photographs of the
8 Morena restaurant.

9 MR. SANDSTRUM: Mark as Respondent's
10 Exhibit 19 some more color copies of photographs, seven
11 pages. Ask the witness what these are.

12 (Exhibit No. 19 was marked for
13 identification and attached hereto.)

14 THE WITNESS: They are photographs of the
15 Midway restaurant.

16 MR. SANDSTRUM: Mark as Exhibit
17 Respondent's 20 more color copies of photographs. Ask
18 the witness if he is familiar with these photographs and
19 tell me what they are.

20 (Exhibit No. 20 was marked for
21 identification and attached hereto.)

22 THE WITNESS: San Marcos.

23 BY MR. SANDSTRUM:

24 Q. Are those photographs of the San Marcos
25 restaurant we talked about today?

1 A. Correct.

2 Q. Attach as Respondent's Exhibit 21 some more
3 color copies of photographs. Ask the witness if he is
4 familiar with these photographs and what they are.

5 (Exhibit No. 21 was marked for
6 identification and attached hereto.)

7 THE WITNESS: The Washington restaurant.

8 BY MR. SANDSTRUM:

9 Q. That's the Washington street restaurant that
10 we talked about today?

11 A. Correct.

12 Q. We are going to mark as next in line
13 Respondent's Exhibit 22, some more color copies of
14 photographs, six pages. And ask the witness if he knows
15 what these are and if he is familiar with them.

16 (Exhibit No. 22 was marked for
17 identification and attached hereto.)

18 THE WITNESS: That's the restaurant that's at
19 2303 Garnet Avenue.

20 BY MR. SANDSTRUM:

21 Q. That's the restaurant we talked about today on
22 Garnet Avenue?

23 A. Yes.

24 Q. From the time you purchased the Rosecrans
25 restaurant in January 1992, have the restaurants that

1 you or that your company currently owns, have they been
2 successful?

3 A. Yes.

4 Q. In general, what did you do to make them
5 successful from '92 to the present?

6 A. To make good food; that's the most important
7 thing. It's fresh, as economical that it can be, and
8 uniform. And make them as uniform or the same as
9 possible so they can stand out.

10 MS. ARMENTA: Sounds like the witness disputes
11 the translation.

12 INTERPRETER: The witness used a word so that
13 they can be identified, but the English culture, that
14 would not make an adequate interpretation as I believe
15 that the interpretation would be so that they would all
16 be --

17 THE WITNESS: So that the people become
18 familiarized with the restaurants. Whenever they enter
19 one restaurant or another, so that they are all the same
20 so that the people can identify them as one.

21 BY MR. SANDSTRUM:

22 Q. Since your purchase of the Rosecrans
23 restaurant, have your efforts and that of Claudia
24 developed substantial goodwill in the restaurants that
25 your company currently owns or licenses?

1 MS. ARMENTA: Could you read that back,
2 please.

3 (Record read.)

4 MS. ARMENTA: Objection. Assumes facts not in
5 evidence as to "purchase" as well as legal conclusion,
6 and it calls for a legal conclusion as to "goodwill."
7 And leading.

8 THE WITNESS: Yes, yes, we worked so that we
9 could achieve all that.

10 MR. SANDSTRUM: Can you read the answer back
11 real quick?

12 (Record read.)

13 BY MR. SANDSTRUM:

14 Q. When you say you worked to achieve all that,
15 what kind of work are you talking about?

16 A. What I have already answered many times.
17 Working towards making foods very fresh, economical,
18 making good food, good service, pretty places that also
19 look clean, a lot of other things. But there are things
20 that a restaurant -- everything that is required in a
21 restaurant.

22 Q. Have you invested in a lot of advertising for
23 your restaurants?

24 MS. ARMENTA: Objection. Leading and vague.

25 THE WITNESS: Since the case began, I continue

1 working, and I continue to do everything well. But I
2 don't spend any money on publicity. Before I did, not
3 anymore.

4 BY MR. SANDSTRUM:

5 Q. Prior to the time you purchased the Rosecrans
6 restaurant from your father, you worked for him, didn't
7 you, at the Rosecrans location?

8 A. Yes.

9 Q. At or around the time 1990, 1991 period, what
10 was your job responsibilities at that location?

11 A. I was manager in the afternoon shift.

12 Q. Do you have an understanding, before it was
13 called Santana's Mexican Food, that it had a different
14 name?

15 A. Two different names.

16 Q. What were those names?

17 A. First it was Alberto's and after that it was
18 Corona's.

19 Q. Why did they change the name Alberto's at the
20 Rosecrans location?

21 MS. ARMENTA: Objection. Calls for
22 speculation.

23 THE WITNESS: Because the owners of Alberto's
24 were not in agreement for -- they weren't in agreement
25 that we should sell fish tacos. That's why the name of

1 "Alberto's" was removed.

2 BY MR. SANDSTRUM:

3 Q. What was the name that was added?

4 A. Corona's.

5 Q. Do you know whose idea that was?

6 A. I don't remember exactly, but through what we
7 have seen throughout this case and everything that we
8 have talked about, it was an idea that was -- Benito was
9 the one that made the signs. Probably it was the idea
10 with my father and Benito. We all talked about it. We
11 decided on Corona's because it was -- we made -- it was
12 during a time when Corona had a lot of success. We
13 wanted to jump on that ship of publicity and
14 advertisement, but they took us down.

15 Q. Eventually that name "Corona" was removed,
16 right?

17 A. Yes.

18 Q. What was the name that was added after that?

19 A. Santana's.

20 Q. If you know, what was the first restaurant
21 name to use the "Santana's Mexican Food" name?

22 A. Rosecrans.

23 Q. What was the next restaurant?

24 A. Yucca Valley.

25 Q. Could we take a break.

1 MS. ARMENTA: Sure.

2 (Break taken.)

3 MR. SANDSTRUM: Back on the record.

4 Q. Before you purchased the Rosecrans restaurant
5 in January 1992, did your father own another restaurant
6 called Santana's Mexican Food?

7 A. Yes.

8 Q. What was that called?

9 A. Santana's Mexican Food.

10 Q. How far was that location from the Rosecrans
11 restaurant, if you know?

12 A. It's Yucca Valley, about 150 miles.

13 Q. I'm going to mark as Respondent's Exhibit --
14 what's the one you have there?

15 MS. ARMENTA: 22 is the last one here.

16 MR. SANDSTRUM: Respondent's Exhibit 23. It's
17 a servicemark principal register, United States Patent
18 and Trademark office.

19 (Exhibit No. 23 was marked for
20 identification and attached hereto.)

21 BY MR. SANDSTRUM:

22 Q. Can you tell me what that is? Are you
23 familiar with that document?

24 A. This is the register, one of the three
25 registers of the logo.

1 Q. For what?

2 A. Excuse me. For Santana's Mexican foods.

3 Q. Who is the registrant for that registration?

4 MS. ARMENTA: Objection. Document speaks for
5 itself, best evidence rule.

6 THE WITNESS: I am the owner of this register.

7 BY MR. SANDSTRUM:

8 Q. I'm going to show you the next document marked
9 as Respondent's Exhibit 24.

10 (Exhibit No. 24 was marked for
11 identification and attached hereto.)

12 BY MR. SANDSTRUM:

13 Q. Respondent's Exhibit 24, can you tell me what
14 this document is?

15 A. This is the register of Santana's Mexican Food
16 Es Muy Bueno.

17 Q. Mark as Respondent's Exhibit 25 another
18 one-page document.

19 (Exhibit No. 25 was marked for
20 identification and attached hereto.)

21 BY MR. SANDSTRUM:

22 Q. Can you tell me what this is?

23 A. This is the register for Santana's Mexican
24 Grill that I registered.

25 Q. Back in -- strike that.

1 Prior to filing a trademark application to
2 register exhibits we just talked about, servicemark
3 trademark registrations, did you notify your father that
4 you're doing that?

5 A. Yes.

6 Q. Did you tell your brother, Arturo Santana Lee?

7 A. Yes.

8 Q. Did you tell your brother, Pedro Santana Lee?

9 A. No.

10 Q. Did your father object that you were going to
11 register the name "Santana's Mexican Food"?

12 A. No.

13 Q. How about "Santana's Mexican Grill"?

14 A. No.

15 Q. How about the composite mark, Santana's
16 Mexican Food and Design?

17 A. No.

18 Q. How about did your brother ever object --

19 MS. ARMENTA: Objection. Vague.

20 BY MR. SANDSTRUM:

21 Q. Prior to you registering for filing the
22 trademark application to register the name "Santana's
23 Mexican Grill," did your brothers ever object to you
24 doing so?

25 MS. ARMENTA: Same objection.

1 THE WITNESS: No.

2 BY MR. SANDSTRUM:

3 Q. With respect to Respondent's Exhibit R 23,
4 registration No. 2682978, did your father have any
5 involvement with the creation of the logo that's shown
6 on that registration?

7 MS. ARMENTA: Objection. Misleading,
8 confusing.

9 THE WITNESS: My father had nothing to do with
10 the design.

11 BY MR. SANDSTRUM:

12 Q. Who created that design?

13 A. Claudia and Maite.

14 Q. Did your brother, Arturo Santana Lee, have
15 anything to do with the creation of the design --

16 A. No.

17 Q. -- hold on -- Respondent's Exhibit R 23?

18 MS. ARMENTA: Same objection. Calls for
19 speculation, lacks foundation.

20 THE WITNESS: No.

21 BY MR. SANDSTRUM:

22 Q. To your knowledge, did your brother, Arturo
23 Santana Lee, have any involvement of the creation of the
24 design located on Respondent's Exhibit 23?

25 MS. ARMENTA: Same objections.

1 THE WITNESS: No.

2 BY MR. SANDSTRUM:

3 Q. With respect to Respondent's Exhibit 23,
4 registration No. 2634976, who created the mark
5 "Santana's Mexican Grill," if you know?

6 A. Claudia and I.

7 Q. Has your company, Santana's Grill, Inc.,
8 continuously used the three service marks that we marked
9 as Exhibits R 23, 25, and 24 from the date of the
10 registration to the present?

11 MS. ARMENTA: Objection. Vague, compound,
12 confusing, misleading, and leading.

13 THE WITNESS: Yes.

14 BY MR. SANDSTRUM:

15 Q. From the date, looking at Respondent's
16 Exhibit 25, for the registration "Santana's Mexican
17 Food," has Santana's Grill, Inc. used this servicemark
18 from the time it was registered to the present?

19 A. Yes.

20 Q. Would that be the same answer for Respondent's
21 Exhibit 24, registration No. 263148, for Santana's
22 Mexican Food Es Muy Bueno?

23 A. Yes.

24 Q. Would that be the same for Respondent's
25 Exhibit 23 for the servicemark Santana's Mexican Grill?

1 A. Yes.

2 Q. I'm going to mark as Respondent's Exhibit 26
3 appears to be a menu item.

4 (Exhibit No. 26 was marked for
5 identification and attached hereto.)

6 BY MR. SANDSTRUM:

7 Q. Can you tell me what this is?

8 A. That's the restaurants' menu.

9 Q. By "restaurants'" what are you referring to?

10 A. My Santana's restaurants.

11 Q. How many are those?

12 A. Six.

13 Q. How long have those six restaurants been using
14 that menu or something similar thereto?

15 A. At least, minimum, 10 to 12 years.

16 Q. Let me rephrase the question. Has the six
17 restaurants that your company currently owns or licenses
18 used this menu -- the appearance of this menu or similar
19 appearance for the last 12 years?

20 A. Yes.

21 MS. ARMENTA: Objection. Leading.

22 BY MR. SANDSTRUM:

23 Q. I'm going to mark as Exhibit 27, Respondent's
24 Exhibit 27, it's another menu, and ask the witness if he
25 knows what this is.

1 (Exhibit No. 27 was marked for
2 identification and attached hereto.)

3 BY MR. SANDSTRUM:

4 Q. Have you seen that before?

5 A. Yes.

6 Q. What is that?

7 A. It's a menu that was made in '98 when we were
8 opening Midway.

9 Q. Did it have advertise -- does it have the
10 address of any of your restaurants?

11 A. Yes. It has the address of Morena, Rosecrans,
12 Midway, and Broadway, Arturo's restaurants.

13 Q. Why is Arturo's restaurant listed on your
14 menu?

15 A. Because we were opening the restaurants at the
16 same time and what I had said a lot of times, we were
17 trying to do everything together and increase in volume
18 and it was the agreement that we had made.

19 Q. What do you mean by "agreement"?

20 A. It was a word agreement that we had between us
21 that I was going to help him to open the restaurant with
22 training the employees and give him the menu that I had,
23 to help him to do all the registers. And I was the -- I
24 was responsible for the rental contract for ten years,
25 and that's why his name appears here.

1 Q. Look at the next exhibit, Respondent's
2 Exhibit 28. It's a two-page document titled "Guarantee
3 of Lease."

4 (Exhibit No. 28 was marked for
5 identification and attached hereto.)

6 BY MR. SANDSTRUM:

7 Q. If you look at Page 2, is this your signature?

8 A. Yes.

9 Q. Do you recognize the signature below yours?

10 A. That's Claudia.

11 Q. Claude who?

12 A. Claudia Santana.

13 Q. Do you recognize the address that's listed?

14 A. That was the address of the house where I was
15 living.

16 Q. Can you look at that document and tell me if
17 you're familiar with that document?

18 A. Yes. It's the renting -- it's the rental
19 agreement from Broadway.

20 Q. Is that the document that made you obligated
21 on your brother's rental lease?

22 A. Yes.

23 MS. ARMENTA: Objection. Leading, calls for a
24 legal conclusion, document speaks for itself.

25 MR. SANDSTRUM: That's what I --

1 MS. ARMENTA: Don't ask him questions about
2 what it means.

3 MR. SANDSTRUM: I wasn't asking what it means.
4 I was asking what it was.

5 MS. ARMENTA: It's just a guarantee, not a
6 lease in terms of the document itself.

7 BY MR. SANDSTRUM:

8 Q. Are you familiar -- strike that.

9 At the time -- do you know when 411 Broadway,
10 El Cajon restaurant was opened?

11 A. It was '97; '97, '98.

12 Q. Who was the owner of that restaurant?

13 A. Arturo.

14 Q. Arturo who?

15 A. Arturo Santana Lee.

16 Q. Was he an employee of yours at this time?

17 A. Yes.

18 MS. ARMENTA: Objection. Calls for a legal
19 conclusion, lacks foundation.

20 MR. SANDSTRUM: The W-2 will speak for itself,
21 I guess.

22 MS. ARMENTA: Objection. Move to strike
23 answer from counsel.

24 BY MR. SANDSTRUM:

25 Q. Did you have any agreement with your brother,

1 Arturo Santana Lee, with respect to his ability to use
2 the name "Santana's Mexican Grill" at the 411 El Cajon
3 restaurant?

4 A. What I said that we had talked about when he
5 was going to open the restaurant, I told him that we
6 could do everything and that the benefit to myself was
7 going to be in the volume of what we were going to
8 manage. That was going to be my benefit, but at no time
9 did he have any right over the name at that time.

10 Q. I'm going to look at my notes real quick.

11 COURT REPORTER: Off the record?

12 MR. SANDSTRUM: Yeah.

13 (Off the record.)

14

15 EXAMINATION

16 BY MS. ARMENTA:

17 Q. Mr. Sandstrum asked you some questions about
18 whether or not your father objected to any aspect of the
19 way you have run the restaurants.

20 Do you remember those questions?

21 A. Yes.

22 Q. Did your father compliment you on the way that
23 you ran your restaurants?

24 MR. SANDSTRUM: Vague and ambiguous,
25 irrelevant, overbroad.

1 THE WITNESS: What do you mean when you were
2 saying --

3 BY MS. ARMENTA:

4 Q. In the last 12 or more years that you've been
5 in the restaurant business, was there ever a time that
6 your father told you that he was proud of the way you
7 were running the restaurants?

8 MR. SANDSTRUM: Objection. Irrelevant, it's
9 vague and ambiguous, overbroad.

10 THE WITNESS: Probably at one time. But also
11 at one time they asked him whether he could possibly
12 imagine that one of his sons would be able to achieve --
13 would be able to live where I lived, and he said that he
14 never even imagined that one of his sons or children
15 could even have been a gardener in the place where I was
16 living.

17 BY MS. ARMENTA:

18 Q. So by that story, are you telling me that that
19 was your father's way of explaining that he was very
20 proud of the success that you achieved?

21 MR. SANDSTRUM: Calls for speculation.

22 THE WITNESS: Probably.

23 BY MS. ARMENTA:

24 Q. Did your father ever eat at any of your
25 restaurants, to your knowledge?

1 MR. SANDSTRUM: Overbroad.

2 THE WITNESS: Yes.

3 BY MS. ARMENTA:

4 Q. Did he ever complain about the food?

5 A. No, not to me.

6 Q. Did he ever tell you he liked it?

7 A. No.

8 Q. What did he tell you, if anything, about the
9 food?

10 A. None.

11 Q. Did he ever tell you anything -- strike that.

12 In the last, say, 12 or so years that you have
13 been in the restaurant business, can you remember any
14 time that your father told you that he was proud or he
15 liked the way that you ran any aspect or any part of
16 your restaurant business?

17 MR. SANDSTRUM: Objection. Vague and
18 ambiguous, overbroad, lacks foundation.

19 THE WITNESS: No, I don't remember that he
20 ever said that to me.

21 BY MS. ARMENTA:

22 Q. You don't remember him ever making a comment
23 to you about your restaurant business?

24 A. That it was good; that everything was fine.

25 Q. So he conveyed to you his viewpoint that the

1 way you were running your restaurants was good?

2 MR. SANDSTRUM: Objection. It's overbroad,
3 vague and ambiguous, vague as to time.

4 THE WITNESS: No.

5 BY MS. ARMENTA:

6 Q. What did you mean when you said it was good?

7 A. He did not compliment to me. He said it was
8 fine, it was good. But like you're saying, he never
9 complimented me.

10 Q. So what you're saying is what he conveyed to
11 you was the way you were running your business was fine;
12 is that right?

13 MR. SANDSTRUM: Vague and ambiguous, overbroad
14 as to time.

15 THE WITNESS: Yes.

16 BY MS. ARMENTA:

17 Q. Can you remember at what point during your
18 operation of these several restaurants your father
19 conveyed that sentiment to you?

20 MR. SANDSTRUM: Same objections.

21 THE WITNESS: No, no, I don't remember.

22 BY MS. ARMENTA:

23 Q. Was it more than once?

24 A. I don't think so.

25 Q. So in 12 years you're telling me that your

1 father only told you once that the way you were running
2 your restaurants was fine?

3 MR. SANDSTRUM: Misstates testimony.

4 THE WITNESS: Yes, I think so. Maximum,
5 twice.

6 BY MS. ARMENTA:

7 Q. Did you do anything in terms of running your
8 restaurants that you thought your father would not like
9 or would object to?

10 MR. SANDSTRUM: That calls for speculation,
11 it's irrelevant.

12 THE WITNESS: I was making decisions, mine. I
13 wasn't thinking about what my father was thinking. I
14 was thinking about the decisions that I would make about
15 my business, nothing else.

16 BY MS. ARMENTA:

17 Q. While I appreciate that answer, I have to move
18 to strike it as nonresponsive.

19 MR. SANDSTRUM: I think it's very responsive.

20 MS. ARMENTA: Ms. Reporter, could you read
21 back the last question, please.

22 (Record read.)

23 MR. SANDSTRUM: Same objections.

24 THE WITNESS: I think I did answer what was
25 asked; that if whether, what he thought whether I was

1 taking considering it, taking into account --

2 BY MS. ARMENTA:

3 Q. I'm not asking about that.

4 MR. SANDSTRUM: Let him finish his answer.

5 MS. ARMENTA: For the record, counsel's
6 shouting.

7 MR. SANDSTRUM: Well, I think the Judge would
8 be quite amused.

9 Go ahead.

10 MS. ARMENTA: I don't know what your problem
11 is, but I'm speaking very slowly and I'm giving the
12 interpreter time to translate. And I'm trying to get a
13 clear record. There's no reason to get upset.

14 MR. SANDSTRUM: I'm not upset.

15 MS. ARMENTA: I didn't do any of that during
16 the time that you were asking questions. I'm entitled
17 to cross-examination.

18 MR. SANDSTRUM: I absolutely agree.

19 MS. ARMENTA: If it makes you uncomfortable --
20 Ms. Reporter, can you read --

21 MR. SANDSTRUM: What makes me uncomfortable is
22 when you cut the witness' testimony off.

23 MS. ARMENTA: You spent all morning cutting
24 off your own client's testimony because you were asking
25 questions so quickly.

1 MR. SANDSTRUM: Here we go. Trademark
2 attorney, here we are. She has done this over and over
3 again.

4 MS. ARMENTA: Just make an objection and we
5 will move on.

6 MR. SANDSTRUM: I'm asking you to now.

7 MS. ARMENTA: Ms. Reporter, could you please
8 read back the question.

9 MR. SANDSTRUM: Quite interesting.

10 (Record read.)

11 MR. SANDSTRUM: Same objections.

12 BY MS. ARMENTA:

13 Q. Given your answer, let me try to re-ask the
14 question. Perhaps I was unclear.

15 Can you think of anything in the last 12 years
16 that you've done in terms of running your restaurants
17 that you believe your father does or did not like?

18 MR. SANDSTRUM: Calls for speculation, it's
19 irrelevant, immaterial.

20 THE WITNESS: I don't know. I don't know the
21 answer to the question that you're asking. I don't know
22 what he might have thought.

23 BY MS. ARMENTA:

24 Q. How old are you?

25 A. 38 years old.

1 Q. So you've known your father for 38 years at
2 least, right?

3 A. Correct.

4 Q. And you were in the restaurant business with
5 your father for some years; is that right?

6 A. (No audible response.)

7 Q. For some amount of years?

8 A. Yes.

9 Q. Now, when your father owned the Rosecrans
10 location, did that location have a drive-thru?

11 A. Yes.

12 Q. Was there a menu located outside of the
13 drive-thru so that vehicles approaching the drive-thru
14 window could order?

15 A. Yes.

16 Q. During the same time period, focusing on the
17 time period that your father owned the restaurant and
18 you worked there as an employee, did the Rosecrans
19 restaurant serve fresh food?

20 A. Yes.

21 Q. And was it Mexican food?

22 A. Yes.

23 Q. And did it strive to achieve price points that
24 were low enough such that the food was attractive to the
25 public?

1 MR. SANDSTRUM: Objection. Vague and
2 ambiguous.

3 THE WITNESS: Yes.

4 BY MS. ARMENTA:

5 Q. During the time that you worked the afternoon
6 shift at the Rosecrans location while your father still
7 owned it, did you ensure that the restaurant was
8 maintained in a clean condition?

9 A. Yes.

10 Q. During the same time period, did you make sure
11 that there was good service offered to the consuming
12 public?

13 A. Correct.

14 Q. At the same time, did you ensure that there
15 was good food offered to the consuming public?

16 A. Yes.

17 Q. Has there been a time in the recent last year
18 that you asked your father, either to your father
19 directly or indirectly through your mother, to give you
20 the trademarks that are at issue in this case?

21 MR. SANDSTRUM: This is an objection. It's
22 compound, it violates potential settlement communication
23 privileges applicable by federal law.

24 THE WITNESS: To be more exact, what I asked
25 for, to back off from the case, retire from the case and

1 to let us fight it out; that would be Arturo Santana,
2 Arturo Castaneda, and myself. That, I did ask him.

3 BY MS. ARMENTA:

4 Q. Did you have any settlement discussions with
5 your father about trying to resolve this case in between
6 the two of you where lawyers weren't present?

7 A. There were no lawyers.

8 Q. Did you have any settlement discussions with
9 him?

10 MR. SANDSTRUM: Vague and ambiguous as to what
11 you mean by "settlement."

12 THE WITNESS: Yes, we did talk. We did talk
13 about that, my father and I.

14 BY MS. ARMENTA:

15 Q. How long ago was that?

16 A. When I finished getting divorced.

17 Q. Is it true that you acknowledged to your
18 father that your father was the true owner of the mark
19 Santana's Mexican Food or Santana's Mexican Food Es Muy
20 Bueno?

21 A. No.

22 Q. Now, either at the time that you started
23 opening the restaurants or at the time that you first
24 acquired Rosecrans, did you ever have discussions with
25 your father about where your restaurants were going to

1 be located geographically?

2 MR. SANDSTRUM: Object. It's compound.

3 THE WITNESS: No. As a matter of fact, when I
4 opened -- I opened restaurants, and he didn't know when
5 or where, but he never went over there. He never said,
6 Oh, what a nice restaurant, it really turned out well.

7 BY MS. ARMENTA:

8 Q. Do you have any restaurants that are outside
9 of San Diego County?

10 A. No.

11 Q. You said before that all of your restaurants
12 used -- I heard this wrong -- both Santana's Mexican
13 Grill and Santana's Mexican Food; is that accurate?

14 MR. SANDSTRUM: Vague as to time.

15 THE WITNESS: Yes, yes, both names are used.

16 BY MS. ARMENTA:

17 Q. So let's take an example of the Rosecrans
18 restaurant; that's also sometimes called the Point Loma
19 restaurant, correct?

20 A. Correct.

21 Q. That restaurant has a sign on its roof outside
22 that says Santana's Mexican Food, right?

23 A. Yes. It doesn't have it anymore, but it did
24 used to.

25 Q. What kind of sign does it have now?

1 A. It doesn't have any right now.

2 Q. Does it have any exterior signage?

3 A. There's one that says Santana's Mexican Food.

4 Q. You're talking about the Point Loma
5 restaurant?

6 A. Correct.

7 Q. Is there anything at the Point Loma
8 restaurant, the Rosecrans restaurant either on signage
9 or on marketing or menus that contains the words
10 Santana's Mexican Grill?

11 MR. SANDSTRUM: Compound. Just to clarify the
12 record, Point Loma and Rosecrans are one and the same.

13 MS. ARMENTA: Agreed.

14 THE WITNESS: The menus inside say Santana's
15 Mexican Grill.

16 BY MS. ARMENTA:

17 Q. Do the menus for all of your restaurants say
18 Santana's Mexican Grill?

19 MR. SANDSTRUM: Now or when; anytime?

20 MS. ARMENTA: Now.

21 THE WITNESS: I think so, but I'm not
22 100 percent sure.

23 BY MS. ARMENTA:

24 Q. And then as for exterior signage, some
25 restaurants say Santana's Mexican Food and some say

1 Santana's Mexican Grill; is that right?

2 MR. SANDSTRUM: Objection. Vague and
3 ambiguous.

4 THE WITNESS: Correct.

5 BY MS. ARMENTA:

6 Q. Why do you have different names for your
7 restaurants?

8 MR. SANDSTRUM: Objection. Misstates
9 testimony.

10 THE WITNESS: Because the names are mine.

11 BY MS. ARMENTA:

12 Q. Is there a difference in the quality of food
13 for the menus between restaurants that have exterior
14 signage that say Santana's Mexican Food versus those
15 that say Santana's Mexican Grill?

16 A. No.

17 Q. So, in your viewpoint, your attempt is to run
18 all seven of these restaurants, six plus the one about
19 to be opened, in a uniform and consistent fashion; is
20 that right?

21 A. Correct.

22 Q. Is there some reason that some of the
23 restaurants say Santana's Mexican Food and some of them
24 say Santana's Mexican Grill?

25 A. Yes.

1 Q. What's the reason?

2 A. I want them to know that both names mean the
3 same.

4 Q. How does someone -- how do you intend to
5 communicate to the public that Santana's Mexican Food is
6 the same restaurant as Santana's Mexican Grill?

7 MR. SANDSTRUM: Object. Vague and ambiguous,
8 lacks foundation.

9 THE WITNESS: Because people, when they come
10 to my restaurants, the people distinguish my restaurants
11 through the colors, through the uniforms, and by the
12 decoration inside. So they know that it's the same
13 restaurant.

14 BY MS. ARMENTA:

15 Q. What are the colors that you have chosen for
16 your restaurant?

17 A. The ones that you can see in the photos.

18 Q. Tell me. I need it for the record.

19 A. White and terra cotta.

20 Q. And the white and terra cotta are in terms of
21 the color of the paint of the building; is that right?

22 A. Correct.

23 Q. Are there other colors you've selected for
24 your restaurant?

25 A. In the past there were other colors, but I

1 changed them on purpose.

2 Q. So you're telling me that you chose the white
3 and terra cotta to use consistently on the exterior of
4 your restaurants; is that right?

5 A. Correct.

6 Q. Did you also select blue and green lettering
7 to use for the words that are on the exterior signage?

8 A. The colors of the logo, yes.

9 Q. I'm not talking about the sawtooth design.
10 I'm talking about the words. Did you also select blue
11 and green to use for the words that are located on the
12 signage throughout all of your restaurants?

13 A. Yes.

14 Q. And you're telling me that the selection of
15 these colors was your idea; is that right?

16 A. Yes.

17 Q. Let me show you Respondent's -- I'm sorry.
18 Petitioner's Exhibit No. 5. Turning to the bottom
19 photos, do you recognize any people in that photograph?

20 A. It's Arturo, my Uncle Servando -- my Uncle
21 Servando and my Aunt Blanca.

22 Q. Do you recognize what restaurant they are
23 standing in front of in that picture?

24 A. Yucca Valley.

25 Q. What colors would you say are painted on that

1 restaurant in that photograph?

2 A. On the building it's green, orange, and blue,
3 but I'm also looking in the other photo --

4 Q. I'm going to ask you about that photo.

5 A. Well, let me answer.

6 Q. Please.

7 A. "Santana's" Santana's is green, "Es Muy Bueno"
8 is green, "Mexican Food" is blue.

9 Q. What colors are depicted on the top
10 photograph?

11 A. The "Santana's" is green.

12 Q. Uh-huh.

13 A. The "Es Muy Bueno" is green, "Mexican Food" is
14 blue.

15 Q. So the lettering is in blue and green. Are
16 there any other colors for the lettering?

17 A. No.

18 Q. And the building has got an orange color?

19 A. Yes.

20 Q. It's got some white on it and it's got some
21 blue on it?

22 A. No, it doesn't have any white.

23 Q. Did you have any participation in selecting
24 the colors that appear in the photographs on
25 Petitioner's Exhibit No. 5?

1 A. No.

2 Q. How old were you when the Yucca Valley
3 restaurant opened, if you know?

4 A. It was in '80 -- '80 what?

5 Q. I can't testify.

6 A. I was about 18, I think; 18, 19.

7 Q. Were you living in the United States at that
8 time?

9 A. I lived here in San Diego.

10 Q. Did you attend high school in San Diego?

11 A. One year.

12 Q. What year?

13 A. In '88, '88.

14 Q. What high school?

15 A. No, no, no. It was '87 when I went.

16 Q. Was it your senior year or junior year?

17 A. I didn't finish high school.

18 Q. Did you attend that high school for an entire
19 school year?

20 A. Yes.

21 Q. Did you take your classes in English or
22 Spanish?

23 A. I would take English as second language.

24 Q. Can you read any English?

25 A. Yes.

1 Q. You're more comfortable testifying in Spanish
2 today?

3 A. Yes.

4 Q. To your knowledge, did your father attend any
5 school in the United States?

6 A. I think so.

7 Q. Do you know one way or the other?

8 A. I understand that when he was very little in
9 Santa Barbara, he went to school half a year, something
10 like that. That they would talk.

11 Q. Does your father speak English?

12 A. Yes.

13 Q. How well?

14 A. Well.

15 Q. Can he read English?

16 A. Yes. He can a little bit less than me, but he
17 can.

18 Q. When you caused Santana's Grill, Inc. to seek
19 federal trademark registrations, you indicated
20 previously that you notified your dad before seeking to
21 register those marks; do you remember that?

22 A. When you say "notify," it was very formal. I
23 spoke with him and I talked to them, correct. I talked
24 to them about how I was going forward with the register.

25 Q. To whom?

1 A. My father and Arturo.

2 Q. Why?

3 A. Because it was very important to register the
4 name.

5 Q. Why would you tell your father?

6 A. So that he would know that I was registering
7 it, and if he was not in agreement, then he could tell
8 me.

9 Q. At that time, did you tell your father that
10 you intended to file a lawsuit against your brothers and
11 Arturo Castaneda?

12 MR. SANDSTRUM: Objection. Calls for
13 speculation, assumes facts not in evidence.

14 THE WITNESS: I did not know. I did not know
15 what was going to happen. I was just beginning to
16 register them. I didn't know what was going to happen.

17 BY MS. ARMENTA:

18 Q. I'm just asking what was said between you and
19 your father. So, at the time that you told your father
20 about the registrations, did you tell him that you were
21 going to file a federal lawsuit against your brothers
22 and Arturo Castaneda?

23 MR. SANDSTRUM: I'm going to object as
24 argumentative, asked and answered.

25 THE WITNESS: No.

1 BY MS. ARMENTA:

2 Q. As you sit here today, do you think your
3 father's reaction to your indication that you wanted to
4 register federal trademarks would have been different if
5 you had told him that you were going to sue your
6 brothers and Arturo Castaneda?

7 MR. SANDSTRUM: Objection. Calls for
8 speculation, assumes facts not in evidence, it's
9 irrelevant, assumes that he had that pre-thought.

10 THE WITNESS: I can't know what would have --
11 what would have happened. I'm not a magician.

12 BY MS. ARMENTA:

13 Q. Did your father ever suggest to you -- strike
14 that.

15 So I'm going to show you first
16 Respondent's 25, that's the registration for Santana's
17 Mexican Grill. I think you already testified to this; I
18 apologize for going over it again.

19 But on which restaurant did the words
20 "Santana's Mexican Grill" first appear?

21 MR. SANDSTRUM: That's asked and answered.

22 THE WITNESS: In the restaurant on Broadway;
23 that was Arturo Santana's.

24 BY MS. ARMENTA:

25 Q. Let me show you Respondent's 23, which is the

1 servicemark registration 2682978. Now, in terms of the
2 sawtooth pattern that's located above and below -- of
3 the triangular pattern that appears above and below the
4 word "Santana's," isn't it true that the Yucca Valley
5 restaurant already had a sign with that triangular
6 pattern before the time Claudia and Maite worked on the
7 logo?

8 A. No. I don't know why you say that. Where do
9 you get that that logo was like that before?

10 Q. From the sworn testimony of your father.

11 MR. SANDSTRUM: Objection. Move to strike
12 counsel's testimony.

13 MS. ARMENTA: He asked me a question.

14 MR. SANDSTRUM: You're not testifying.

15 MS. ARMENTA: He asked me a question.

16 MR. SANDSTRUM: Well, you are now. My Lord.

17 Amazing.

18 BY MS. ARMENTA:

19 Q. So did you sit here when your father was
20 testifying a couple of months ago?

21 A. Yes.

22 Q. Do you know one way or another whether or not
23 the Yucca Valley restaurant had a sign that had
24 triangles on it similar to what's depicted in
25 Respondent's 23 prior to the time Maite and Claudia

1 worked on the logo?

2 A. No.

3 Q. Now, let me show you -- let me ask you more
4 about that one. That one says Santana's Mexican Food.
5 Now, prior to the time that Claudia and Maite worked on
6 the logo, were there any restaurants in existence that
7 had the words Santana's Mexican Food?

8 A. Yes.

9 Q. Which restaurants were those?

10 A. It was Rosecrans and Yucca Valley, Morena was
11 already there, too. Those were the ones that were
12 already there that used them before.

13 Q. Let me show you Respondent's 24.

14 Prior to the time that you acquired any
15 interest in the Rosecrans restaurant, were there any
16 restaurants that had the name "Santana's Mexican Food"
17 on them?

18 MR. SANDSTRUM: Object as asked and answered.

19 THE WITNESS: Yes. Yucca Valley.

20 BY MS. ARMENTA:

21 Q. Do you know one way or another whether Yucca
22 Valley was using the phrase "Es Muy Bueno" in connection
23 with restaurant services prior to the time that you
24 acquired interest in Rosecrans?

25 A. I believe so. I believe that they used it,

1 too.

2 Q. Now, let me ask you a little bit about your
3 ownership of the Rosecrans restaurant. I understand
4 that at first your father, Arturo Santana, owned that
5 restaurant; is that right?

6 A. Correct.

7 Q. And then you explained that the ownership was
8 transferred to you and Claudia at some point roughly
9 1991 or 1992; is that right, '91 or '92?

10 A. Correct. He didn't -- trust me (In English).
11 He didn't transfer it to me; he sold it to me.

12 Q. So roughly 1991 or 1992?

13 A. '92.

14 Q. So '92 you and Claudia became the owners of
15 the Rosecrans restaurant; is that right?

16 A. Yes.

17 Q. Now, at that time, you agree, don't you, that
18 the Yucca Valley restaurant was already in existence,
19 right?

20 A. Yes.

21 Q. Now, after you acquired -- you and Claudia
22 acquired Rosecrans, then later you formed the company
23 Santana's Grill, Inc., right?

24 A. Yes.

25 Q. And that company was formed in 1998, right?

1 A. Correct.

2 Q. And I'll show you Exhibit No. 1 in your
3 ex-wife's deposition.

4 Is that the articles of incorporation for
5 Santana's Grill, Inc.?

6 A. Yes.

7 Q. How, if you did, did you transfer the
8 ownership of the Rosecrans restaurant from you and
9 Claudia to the corporation called Santana's Grill, Inc.?

10 MR. SANDSTRUM: Object. Calls for a legal
11 conclusion.

12 THE WITNESS: I don't know. I'm not a lawyer.
13 I don't know about those things. I hired a lawyer and
14 the accountant. The accountant recommended that I
15 incorporate, but I don't know how they did those things.

16 BY MS. ARMENTA:

17 Q. Did you or Claudia ever sign any kind of a
18 document that transferred ownership of the Rosecrans
19 restaurant from the two of you to the corporation?

20 A. Probably. If it was required to legally do
21 that, everything was done through attorneys. And we
22 just did what they told us to do and we went about doing
23 it.

24 Q. Do you have any specific knowledge?

25 A. No.

1 Q. Do you have any specific knowledge of either
2 you or Claudia executing an assignment of any trademark
3 rights or any servicemark rights?

4 INTERPRETER: I'm sorry could you please
5 clarify "assignment."

6 MS. ARMENTA: I'll use the word "transfer."

7 Q. Do you have any specific recollection of you
8 or Claudia transferring any rights to the mark Santana's
9 Mexican Grill or Santana's Mexican Food from you and
10 Claudia to the corporation, Santana's Grill, Inc.?

11 MR. SANDSTRUM: Objection. Calls for a legal
12 conclusion, compound.

13 THE WITNESS: No.

14 BY MS. ARMENTA:

15 Q. When you first formed Santana's Grill, Inc.,
16 the corporation, did you fund that corporation with any
17 money?

18 MR. SANDSTRUM: Objection. Irrelevant.

19 THE WITNESS: Yes. An account had to be
20 opened and money -- monies had to be deposited into that
21 account.

22 BY MS. ARMENTA:

23 Q. Do you agree that the words Santana's Mexican
24 Food were used in connection with restaurant services
25 before the time that you or Claudia first used those

1 words?

2 MR. SANDSTRUM: Vague and ambiguous.

3 THE WITNESS: Yes.

4 MS. ARMENTA: I don't have any further
5 questions.

6 MR. SANDSTRUM: I have one or two. I'm just
7 going to take a quick break, five minutes.

8 MS. ARMENTA: Okay.

9 (Break taken.)

10 MR. SANDSTRUM: Back on the record.

11

12 FURTHER EXAMINATION

13 BY MR. SANDSTRUM:

14 Q. What is the main way, in your opinion, that
15 your customers recognize one of your restaurants?

16 MS. ARMENTA: Objection. Calls for expert
17 testimony.

18 MR. SANDSTRUM: It's his opinion; how could
19 opinion -- an expert testify as to opinion?

20 MS. ARMENTA: Lacks foundation, calls for
21 speculation.

22 THE WITNESS: Because the people identify --
23 people no longer read what is in the middle. People
24 identify --

25 INTERPRETER: The interpreter needs to clarify

1 a term.

2 THE WITNESS: People identify the triangles,
3 the design, the design of triangles. And I prove that
4 when I made some raffles of some trips to Cabo and I
5 went and I put the same triangle design and people
6 thought that it said Santana's. People weren't reading
7 it and it said something else. But people identify the
8 triangle design.

9 BY MR. SANDSTRUM:

10 Q. So, when you're pointing to the document,
11 you're pointing to Respondent'S Exhibit 26 which
12 contains your company logo?

13 A. Correct, and the menu.

14 MR. SANDSTRUM: That's it for me.

15 MS. ARMENTA: Okay. Just one follow-up.

16

17 FURTHER EXAMINATION

18 BY MS. ARMENTA:

19 Q. What restaurant is depicted in
20 Respondent's 18.

21 A. Morena.

22 Q. Is there -- what did you translate for
23 "grengas" (In Spanish)?

24 INTERPRETER: Triangular.

25 BY MS. ARMENTA:

1 Q. Is there a triangular design located on the
2 signage of this restaurant?

3 A. No.

4 MR. SANDSTRUM: She is pointing to the first
5 page of Respondent's Exhibit 18.

6 BY MS. ARMENTA:

7 Q. What restaurant is depicted in
8 Respondent's 19?

9 A. Midway.

10 Q. On the exterior signage of that restaurant,
11 first page of Respondent's Exhibit 19, are there any
12 triangular patterns on that?

13 A. No.

14 MS. ARMENTA: No questions.

15 MR. SANDSTRUM: All right. We are going to do
16 the similar stip that we did today. We're stipulating
17 that the original transcript gets shipped to me, as soon
18 as you can get it to me, and I will have the witness
19 read and sign it. We're going to waive any requirement
20 that it be signed in front of a notary or somebody
21 authorized to administer an oath.

22 And we are going to stipulate that should we
23 need additional amendments to the stipulation to comply
24 with the Trademark Trial Appeals Board rules and
25 regulations in connection with this transcript, we can

1 make those amendments.

2 And then we're going to waive the requirement
3 that the court reporter has to put the exhibits in a
4 sealed envelope and send them off to the trademark
5 office. The attorneys for the parties in these
6 proceedings will go ahead and submit their own
7 transcripts of the testimony taken to the trial --
8 Trademark Trial and Appeals Board.

9 Anything else?

10 MS. ARMENTA: Anything like that. So
11 stipulated.

12 MR. SANDSTRUM: With all these transcripts, if
13 they're not signed, a certified can be used in lieu of
14 the original.

15 MS. ARMENTA: Agreed.

16 COURT REPORTER: Counsel, do you need a copy
17 of this also?

18 MS. ARMENTA: Yes.

19 (Deposition concluded at 1:00 p.m.)
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* * *

I, THE UNDERSIGNED, DECLARE THAT THE ABOVE-MENTIONED
TRANSCRIPT WAS TRANSLATED TO THE BEST OF MY ABILITY
BEFORE THE UNDERSIGNED DEPONENT.

EXECUTED ON THE DAY OF , 20 .

TRANSLATOR/INTERPRETER

* * *

I DECLARE UNDER PENALTY OF PERJURY, UNDER THE LAWS
OF THE STATE OF CALIFORNIA, THAT THE FOREGOING IS TRUE
AND CORRECT.

EXECUTED ON THE DAY OF , 20 .

ABELARDO SANTANA

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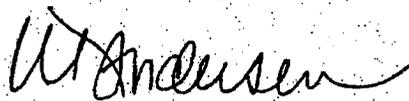
I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

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 placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

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

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

Dated: APR 23 2008



WINDY D. ANDERSEN
Certificate No. 12135

