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**CERTIFICATE OF SERVICE**

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as First Class Mail in an envelope addressed to BOX TTAB NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514 on September 14, 2004. Signed B.C.D.  
B.C. Dunne

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

*# 74/502,436*

**TTAB**

Registration: No. 2,092,391  
Date of Issue: September 2, 1997  
Mark: LA TAPATIA

LA TAPATIA NORCAL, INC., )

Petitioner, )

vs. )

LA TAPATIA TORTILLERIA, INC. )

Registrant. )

) Cancellation No. 92041003

) **STIPULATED MOTION TO SUSPEND**  
) **CANCELLATION PROCEEDING**

Petitioner, LA TAPATIA NORCAL, INC., files this stipulated motion to suspend this proceeding for the following reasons:

1. By Order dated May 10, 2004, the Board suspended this proceeding for only three months because of the three prior stipulated motions and "the minimum and conclusory allegations in support of their request." The Board attorney stated that no further suspensions would be granted unless accompanied by a detailed report signed by both parties.

2. This cancellation proceeding is part of a very complex settlement between the parties involving new concurrent use applications filed by both parties, restriction of prior registrations owned by Registrant and the assignment of rights in a specific geographic territory by the Registrant to the Petitioner.

3. This cancellation proceeding was filed because the settlement agreement was not completed prior to the date when Registrant's registrations became incontestable and,



1 therefore, was necessary to protect Petitioner's rights. When the pending applications are  
2 approved and registrations issued, this proceeding will be dismissed.

3 4. As of this date, Application Serial Nos. 76/515,435 and 76/515,436 of  
4 Petitioner have not been approved although responses to pending office actions were mailed  
5 in April 2004.

6 5. Petitioner cannot dismiss the cancellation proceeding at this time because the  
7 Registrant's registration would become incontestable and beyond challenge in the event that  
8 Petitioner's applications are rejected and the settlement of the parties cannot be fully  
9 implemented.

10 6. Under the circumstances, there is no reason to litigate and, thus, no reason to  
11 activate this proceeding unless the pending applications are rejected. In that event, Petitioner  
12 will not obtain its rights in a specific geographic territory without cancellation of the  
13 Registrant's registration.

14 7. The parties realize that this proceeding is a part of an unusual and complex  
15 settlement agreement which has been executed by the parties. However, the parties are not  
16 aware of any other way to protect Petitioner's rights during the prosecution of the concurrent  
17 use applications.

18 8. Petitioner did not receive a copy of the Order dated May 10, 2004, suspending  
19 this proceeding for only three months. Given the inadvertent lack of notice, the nature of the  
20 settlement agreement between the parties and the fact that the current suspension already has  
21 expired, the parties submit that a report signed by each of them is not necessary and would  
22 only delay the filing of this motion.

23 9. By letter dated August 26, 2004, Mark Miller, counsel for Registrant,  
24 consented to this motion.

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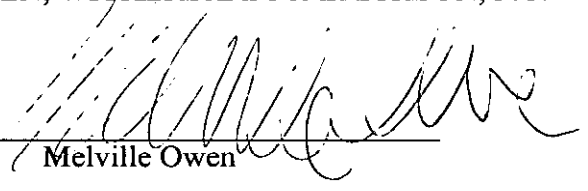
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Under the circumstances, the parties request that this proceeding be suspended for an additional period of six (6) months from September 11, 2004.

Dated: Sept. 14, 2004

Respectfully submitted,  
OWEN, WICKERSHAM & ERICKSON, P.C.

By   
Melville Owen

455 Market Street, 19th Floor  
San Francisco, California 94105  
(415) 882-3200

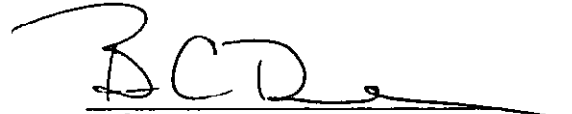
Attorneys for Petitioner, La Tapatia Norcal, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing STIPULATED MOTION TO SUSPEND CANCELLATION PROCEEDING was sent to attorneys for Registrant by first class mail, postage prepaid, to the following address:

Mark D. Miller, Esq.  
Kimble, MacMichael & Upton  
Fig Garden Financial Center  
5260 North Palm, Suite 221  
Fresno, California 93704

DATED: Sept. 14, 2004

  
B.C. Dunne

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