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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 In the Matter

Case No. 2:09-CV-01220-JAM-DAD

11  
12 of

ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS

13 HYATT CORPORATION dba HYATT  
14 REGENCY MAUI RESORT & SPA, a  
15 Delaware corporation, as *pro*  
16 *hac vice* owner, and MAUI BOAT  
17 CO., a Delaware corporation, as  
18 owner of M/S KIELE V, O.N.  
628114, for exoneration from or  
limitation of liability.  
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19 This matter comes before the Court on Defendants Rose  
20 Baldwin ("Rose"), Michael Baldwin, Shandle T.B. Hankins, and  
21 Aaron P. Hankins' ("Defendants" or "Claimants") motion to  
22 dismiss Plaintiffs Hyatt Corporation dba Hyatt Regency Maui  
23 Resort & Spa and Maui Boat Co.'s ("Plaintiffs") limitation  
24 action for lack of subject matter jurisdiction pursuant to  
25 Federal Rule of Civil Procedure 12(b)(1). Plaintiffs oppose the  
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1 motion.<sup>1</sup> Plaintiffs have also filed objections to the Declaration  
2 of Marylou Robken, submitted by Claimants with their reply to  
3 Plaintiffs' opposition to Claimants' motion to dismiss. (Docs #  
4 52, 54). For the reasons set forth below, Plaintiffs'  
5 objections are SUSTAINED and Claimants' motion to dismiss is  
6 GRANTED.  
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8 I. FACTUAL AND PROCEDURAL BACKGROUND  
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10 On January 20, 2009, Claimants filed an action for damages  
11 against Plaintiffs arising out of an incident which occurred on  
12 February 13, 2006. Baldwin v. Hyatt Corp., 2:09-cv-00161 (E.D.  
13 Cal). Plaintiffs filed this action on May 4, 2009, seeking to  
14 limit their liability under 46 U.S.C. § 30511. Claimants move to  
15 dismiss this limitation action, arguing it was not timely filed.  
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17 On February 13, 2006, while vacationing in Hawaii,  
18 Claimants took a snorkeling trip on the M/S Kiele V, a catamaran  
19 owned and operated by Plaintiffs. Claimant Rose allegedly fell  
20 while disembarking from the catamaran when she was instructed by  
21 Plaintiffs' employees to exit from the boat by ladder into the  
22 water at the conclusion of the snorkeling outing. Rose "was  
23 forced under water and was battered back and forth against the  
24 metallic ladder." (Doc # 41 at 2).  
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27 <sup>1</sup> Because oral argument will not be of material assistance,  
28 the Court orders this matter submitted on the briefs. E.D. Cal.  
L.R. 230(g).

1           The parties corresponded about the incident, and the series  
2 of letters and documents exchanged were included with the  
3 parties' motions for the Court's consideration (Docs # 42, 50)  
4 and are summarized below.  
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6           1. February 28 Letter

7           A letter was sent on behalf of Plaintiffs to Claimant  
8 Rose's Attorney on February 28, 2006, ("February 28 Letter")  
9 requesting: a signed medical records release form; the names,  
10 addresses, and telephone numbers of all doctors and medical care  
11 providers and facilities that treated Rose Baldwin for her  
12 injuries; copies of medical records and bills relating to the  
13 treatment of Rose Baldwin's injuries; a description of the type  
14 of injury sustained by Rose Baldwin; information to document  
15 Rose Baldwin's wage loss claim, if any; documentation for any  
16 out-of-pocket expenses; any other documentation that would "be  
17 of assistance to [Plaintiffs] in the evaluation of your claim;"  
18 and any available dates and times to obtain Rose Baldwin's  
19 statement.  
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22           2. March 6 Letter

23           On March 6, 2006, then counsel for Claimant Rose, William  
24 Bernheim, replied by declining to grant access to medical  
25 records ("March 6 Letter"), stating that Rose "is continuing to  
26 experience numbness in her arm, [ ] is under continuing Kaiser  
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1 Medical care[, and] has suffered a quite serious injury  
2 involving nerve damage." Mr. Bernheim also requested information  
3 about the ambulance service which transported Rose to the  
4 hospital post-injury and the ship's captain, crew, and guests on  
5 February 13, 2006.  
6

7 3. March 16 Letter

8 Claimants' new counsel, William Lyons, sent a letter on  
9 March 16, 2006, ("March 16 Letter") to Plaintiffs, detailing his  
10 representation of Claimants. He stated that "Mrs. Baldwin  
11 sustained very serious injuries . . . and it is probable that  
12 she will have surgery as a result of serious injuries to her  
13 cervical, thoracic, and lumbar spine," Mr. Baldwin would be  
14 asserting claims for loss of consortium and emotional distress,  
15 and their 5 children would be asserting claims for severe  
16 emotional distress.  
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19 4. Other March Letters

20 Two letters on behalf of Plaintiffs were sent, affirming  
21 receipt of Claimants' letters and re-requesting the information  
22 sought on February 28, 2006. One letter was sent in response by  
23 the Claimants, confirming the status of the attorneys in the  
24 case.  
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1           5. September 20 Letter

2           On September 20, 2006, a letter from Mr. Lyons ("September  
3 20 Letter") stated that Rose "sustained serious neck, back, and  
4 shoulder injuries in [the] incident . . . [, and] the medical  
5 expenses incurred by [Rose] are in excess of \$50,000. The  
6 purpose of this letter is to advise you that my client has  
7 extensive injuries and will be seeking a substantial recovery at  
8 an appropriate time."  
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11           6. April 9 Letter

12           Mr. Lyons' April 9, 2007, letter ("April 9 Letter") to the  
13 Plaintiffs included some of Rose's medical records. The letter  
14 described Rose as "presently permanently disabled," "in constant  
15 pain," and "completely incapacitated" as a result of the "very  
16 serious and debilitating injuries . . . she [] developed from  
17 th[e] incident." Mr. Lyons referred specifically to the  
18 condition Rose had developed, "Reflex Sympathetic Dystrophy,"  
19 describing it as "a chronic condition characterized by severe  
20 [continuous] pain following major trauma to the bone and soft  
21 tissue[, which is] heightened by emotional distress." The letter  
22 concluded by proposing mediation before the "initiation of  
23 litigation."  
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26           Plaintiffs responded to this letter on April 16, 2007,  
27 ("April 16 Letter") requesting "a list of all medical expenses  
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1 incurred to date." Plaintiffs stated that the April 6 Letter  
2 would be forwarded to the carrier for Kiele V and that they  
3 would be in touch with the Claimants regarding mediation.  
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5 7. November 4 Letter and Settlement Package

6 Andrew Bakos, attorney for the Claimants as of May 24,  
7 2007, sent a "settlement demand" letter to Plaintiffs ("Nov. 4  
8 Settlement Letter"), regarding "claims for personal injuries  
9 caused by [Plaintiffs]." The letter stated that "Rose Baldwin  
10 continues to suffer from the injuries sustained . . . and will  
11 continue to suffer permanent pain and disfigurement from the  
12 accident . . . Michael Baldwin continues to suffer loss of  
13 consortium and will continue to do so in all likelihood for the  
14 remainder of his wife's life." Included with the letter was "a  
15 brief description of the accident, bio-mechanical review, a  
16 detailed summary of the [Claimants'] treatment following the  
17 accident, a review of expected permanent injuries and  
18 impairments, potential brain injury, medical expenses incurred  
19 to date, changes in [Claimants'] activities and lifestyle . . .  
20 ."  
21 Claimants offered to settle for \$3.5 million, but stated the  
22 injuries were valued "in the range of" \$5 million.  
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1 II. OPINION

2 A. Legal Standard

3 1. Federal Rule of Civil Procedure 12(b)(1)

4 Rule 12(b)(1) provides that a motion to dismiss may be  
5 made on the basis of "lack of subject-matter jurisdiction." Fed.  
6 R. Civ. P. 12(b)(1). A Rule 12(b)(1) motion tests "whether the  
7 plaintiff has a right to be in the particular court . . . ."  
8 Trs. of Screen Actors Guild-Producers Pension & Health Plans v.  
9 NYCA, Inc., 572 F.3d 771, 775 (9th Cir. 2009) (internal  
10 quotation marks and citations omitted). "Rule 12(b)(1) attacks  
11 on jurisdiction can be either facial, confining the inquiry to  
12 allegations in the complaint, or factual, permitting the court  
13 to look beyond the complaint." Savage v. Glendale Union High  
14 Sch., 343 F.3d 1036, 1040 n.2 (9th Cir. 2003). Federal courts  
15 are limited in jurisdiction; it is presumed that a case lies  
16 outside the jurisdiction of the federal courts unless the  
17 plaintiff proves otherwise. Kokkonen v. Guardian Life Ins. Co.  
18 of Am., 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391  
19 (1994); Stock W., Inc. v. Confederated Tribes, 873 F.2d 1221,  
20 1225 (9th Cir. 1989).

21 2. Limitation Action

22 The Limitation of Liability Act allows a shipowner to  
23 limit its liability to the value of the vessel by filing an  
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1 action in federal court. 46 U.S.C.A. § 30501, *et seq.*  
2 (previously codified at 46 App. U.S.C.A. § 181, *et seq.*). The  
3 limitation action must be filed within six months of receiving  
4 written notice of a claim arising out of the operation of the  
5 vessel. Id. at § 30511 (previously codified at 46 App. U.S.C.A.  
6 § 185). "Whether a limitation action is filed within six months  
7 is an issue that goes to [a] court's subject matter  
8 jurisdiction." In re UFO Chuting of Hawaii, Inc., 233 F. Supp.  
9 2d 1254, 1256 note 2 (D. Haw. 2001) (citing Tom-Mac, Inc. v.  
10 Biela, 76 F.3d 678, 682 (5th Cir. 1996)).

13 The requirements regarding what must be sent to start the  
14 running of the six month period are not clearly defined. See,  
15 e.g., UFO Chuting, 233 F. Supp. 2d 1254 (demonstrating the lack  
16 of a clear definition of written notice in the Ninth Circuit).  
17 "At a minimum, 'a notice which begins the six-month statute of  
18 limitations must be a notice of a claim subject to limitation.'" Id.  
19 at 1257 (quoting Jung Hyun Sook v. Great Pac. Shipping Co.,  
20 632 F.2d 100, 102 (9th Cir. 1980)). Notice "will be sufficient  
21 if it informs the vessel owner of an actual or potential claim  
22 *which may exceed the value of the vessel . . . .*" Doxsee Sea  
23 Clam Co. v. Brown, 13 F.3d 550, 554 (2d Cir. 1994) (emphasis  
24 added). There must be a "reasonable possibility" that the claim  
25 will exceed the vessel's value in order to be considered  
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1 sufficient notice, e.g., In re Morania Barge No. 190, Inc., 690  
2 F.2d 32, 33-34 (2d Cir. 1982), "[o]therwise, an unnecessary  
3 burden would be placed on the [vessel] owners and courts by  
4 forcing the filing of an action to limit liability . . .  
5 whenever any injury occurs, no matter how trivial." UFO Chuting,  
6 233 F. Supp. 2d at 1257. A court may consider the correspondence  
7 as a whole in determining whether the vessel owner received  
8 sufficient notice of a claim. See Doxsee, 13 F.3d at 554  
9 (considering the "whole tenor" of the correspondence); UFO  
10 Chuting, 233 F. Supp. 2d. at 1258 (analyzing whether the letters  
11 sent by claimants, taken together, provided sufficient notice).

#### 14 B. Analysis

15 Because the pending motion involves a factual jurisdictional  
16 attack, see In re UFO Chuting of Hawaii, Inc., 233 F. Supp. 2d  
17 1254, 1256 (D. Haw. 2001), the court may consider the evidence  
18 provided by the parties in ruling on Claimants' motion to  
19 dismiss. See Thornhill Publ'g Co., Inc. v. General Tel. & Elecs.  
20 Corp., 594 F.2d 730, 733 (9th Cir. 1979). The Court has  
21 disregarded the declaration of Marylou Robken, as Plaintiffs'  
22 objections are well founded and the declaration is not necessary  
23 to support Claimants' motion to dismiss.

24 The outcome of Claimants' motion turns on whether  
25 Plaintiffs received written notice under 46 U.S.C.A. § 30511  
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1 sufficient to trigger the six-month statute of limitations.  
2 Claimants argue that Plaintiffs had notice of a claim as early  
3 as March 6, 2006; however, if the March 6 Letter does not  
4 satisfy the 46 U.S.C.A. § 30511 notice requirement, Plaintiffs  
5 were provided sufficient notice no later than April 9, 2007.  
6 (Doc # 41 at 9-12). Claimants assert the totality of the  
7 correspondence clearly provided sufficient notice, requiring  
8 Plaintiffs to file a limitations action no later than October 9,  
9 2007. Id. Accordingly, Claimants argue this action was not  
10 timely filed. Id. Plaintiffs argue that only the Nov. 4  
11 Settlement Letter provided notice sufficient to trigger the six-  
12 month statute of limitations, as it was the first letter to  
13 alert Plaintiffs that the claims may exceed the \$550,000 value  
14 of the vessel. (Doc # 48 at 5). Thus, Plaintiffs claim they  
15 timely filed the limitations action because it was filed no  
16 later than May 4, 2009. Id.

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20 Here, each of the Claimants' letters characterized Rose's  
21 injury as a serious one, and the Claimants repeatedly provided  
22 details about the nature of the injury and the contemplated  
23 treatments. Specifically, Rose's injury was described as: "quite  
24 serious[, ] involving nerve damage," in the March 6 Letter;  
25 "very serious," affecting "her cervical, thoracic, and lumbar  
26 spine," and probably requiring surgery, in the March 16 Letter;  
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1 and "serious," involving "neck, back, and shoulder injuries," in  
2 the September 20 Letter. Finally, in the April 9 Letter, Rose  
3 was characterized as "presently permanently disabled" from "very  
4 serious and debilitating injuries." Certainly Claimants made  
5 clear Rose's injuries were severe, allegedly resulting from  
6 Plaintiffs' actions.  
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8         Similar limitation actions involving correspondence which  
9 details a claimant's serious injuries find the language used  
10 here provides notice sufficient to trigger the six-month  
11 limitation period; however, in those cases, the value of the  
12 vessel involved in the injury is very small, making it clear  
13 that the letters constituted sufficient notice. See In re  
14 Hawaiian Watersports, L.L.C., 2008 WL 3065381 (D. Haw., Feb. 29,  
15 2008) (involving a wrongful death claim where the vessel was a  
16 kayak valued at \$750); In re Waterfront License Corp., 231  
17 F.R.D. 693 (S.D. Fl. 2005) (involving a wrongful death claim  
18 where the vessel was a jet ski valued at \$2,000); Coastal  
19 Excursions, Inc. v. Khoury, 2007 WL 4553961 (N.D. Ohio, Dec. 19,  
20 2007) (involving claimant's "significant and debilitating  
21 injuries" where the vessel was a jet ski); Paradise Divers, Inc.  
22 v. Upmal, 402 F.3d 1087 (11th Cir. 2005) (involving claimant's  
23 "serious" injuries, exceeding "thousands of dollars" where the  
24 vessel was a boat valued at \$50,000); In re Stair, 2008 WL  
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1 114918 (W.D. Wash, Jan. 9, 2008) (claimant's leg was amputated  
2 arising out of an incident on a boat valued at \$52,000).

3       Claimants' action, however, involved more than one injured  
4 party. The March 16 Letter informed Plaintiffs that there were  
5 six other potential claimants, Rose's husband and their five  
6 children, making the amount of potential damages involved in  
7 this case very large. Considering the correspondence as a whole  
8 up to April 9, 2007, the letters sent by Claimants made clear it  
9 was reasonably possible their claims would exceed the value of  
10 the ship.  
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12       Plaintiffs' opposition to Claimants' motion fails to  
13 acknowledge the potential value of the claims of the Baldwin  
14 children and Rose's husband. Even if Plaintiffs are correct in  
15 asserting that the letters up to April 9, 2007 did not make it  
16 reasonably possible that Rose's claims alone would exceed  
17 \$550,000, Plaintiffs cannot argue that the total damages of  
18 seven claimants would not have the reasonable potential to  
19 exceed the value of the vessel.  
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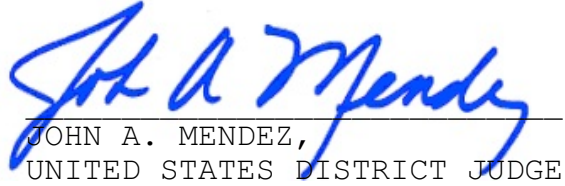
21       Because Claimants provided sufficient notice of a claim  
22 under 46 U.S.C.A. § 30511 as late as April 9, 2007, Plaintiffs  
23 were required to file a limitation action no later than October  
24 9, 2007. Accordingly, Plaintiffs limitation action was not  
25 timely filed, and Claimants' motion to dismiss is granted.  
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1 III. ORDER

2 For the reasons stated above, Plaintiffs' objections are  
3 SUSTAINED and Claimants' motion to dismiss is GRANTED.  
4

5 IT IS SO ORDERED.

6 Dated: May 10, 2010

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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE