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6                          IN THE UNITED STATES DISTRICT COURT

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8                      FOR THE NORTHERN DISTRICT OF CALIFORNIA

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10    TETSUO AKAOSUGI, HIEU NGUYEN,              No. C 11-01272 WHA
      and RINKO DONAHUE,
11

12              Plaintiffs,
         v.                                      **ORDER RE DEFENDANT'S
13                                               BRIEF DESCRIBING PREJUDICE
      BENIHANA, INC., dba BENIHANA               DUE TO PLAINTIFFS' LATE
14    NATIONAL CORPORATION,                      DISCLOSURE OF DAMAGES
                                                 COMPUTATION; ALLEN
15              Defendant.                        LETTER**
                                        /
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17           With regard to defendant's supplemental memorandum describing prejudice by reason of

18    plaintiffs' late disclosure of damages computations, this order will allow plaintiffs' late

19    disclosures.  In the Court's judgment, the prejudice is minimal in light of the fact that **ALL**

20    **THREE PLAINTIFFS MUST STAND FOR A DEPOSITION PRIOR TO TRIAL**.  The alleged prejudice set

21    forth in defendant's memorandum is unpersuasive.

22           With regard to the October 3 letter from Mr. Allen, counsel for plaintiffs, concerning two

23    witnesses who will be on vacation until October 14, plaintiffs' counsel have no one other than

24    themselves to blame for their circumstances.  If those witnesses are so important, counsel should

25    have subpoenaed them long ago and should not have waited until a week before trial.  Had they

26    been subpoenaed, the witnesses would have been available for trial.  As they have not been

27    subpoenaed, the witnesses were free to leave and go away.  The trial date has been set since June

28    2011, and no excuse has been given for counsel's failure to timely subpoena these witnesses.

      The trial will not be delayed.

1    It is highly likely that phase one of the trial will be completed prior to October 15.  In the

2  unlikely event that trial takes longer than the judge anticipates, then this matter may be raised

3  again.  In the future, all counsel are reminded that they should file proper motions and not send

4  letters to the Court.

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6    **IT IS SO ORDERED.**

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8  Dated: October 3, 2012.    _____

WILLIAM ALSUP

9    UNITED STATES DISTRICT JUDGE

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