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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

11 TETSUO AKAOSUGI, HIEU NGUYEN, on
12 behalf of themselves and all others similarly
13 situated,

14 Plaintiffs,

15 v.

16 BENIHANA NATIONAL CORP.,
17 BENIHANA INTERNATIONAL, INC.,
18 BENIHANA CARLSBAD CORP.,
19 BENIHANA ENCINO CORP., BENIHANA
MARINA CORP., BENIHANA ONTARIO
CORP., BENIHANA OF PUENTE HILLS
CORP., BENIHANA SUNRISE
CORPORATION,

20 Defendants.

21 Case No. 11-CV-01272 WHA

22 **CLASS ACTION**

23 **[PROPOSED] ORDER ADDRESSING
DISCOVERY DISPUTE OVER
REQUEST FOR CLASS LIST**

24 [Assigned to Courtroom 8, Hon. William
25 Alsup]

26 Complaint Filed: February 14, 2011
27 Trial Date: October 9, 2012

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[PROPOSED] ORDER ADDRESSING DISCOVERY DISPUTE OVER REQUEST FOR CLASS LIST
Case No. 11-CV-01272 WHA

1 Interrogatory No. 1 in Representative Plaintiff Tetsuo Akaosugi's and Hieu Nguyen's
2 ("Plaintiffs") Interrogatories (Set One (A)) requested that Defendant Benihana National Corp.
3 ("Defendant") identify "all Salaried Manager Class Members" by name, home address, telephone
4 number, email address, dates of employment, and facilities where they performed work.

5 In its response, Defendant raised various objections, including those based on third party
6 privacy, and, thereupon, declined to identify the putative class members.

7 On September 22, 2009, Plaintiffs filed a letter regarding the above-referenced discovery
8 dispute (Document No. 35).

9 Pursuant to the Court's Order Setting Hearing on Plaintiffs' Discovery Dispute (Document
10 No. 36), Defendant filed a letter on September 29, 2011 (Document No. 38) and the parties
11 appeared at a hearing on October 3, 2011.

12
13 Based upon the parties' letter submissions, their counsels' arguments at the October 3, 2011
14 hearing, and for good cause showing, the Court hereby **ORDERS** as follows:

- 16 1. The parties shall proceed as set forth in the transcript from the October 3, 2011 hearing,
17 (Document. No. 39);
- 18 2. Within 5 business days of the date this Order is entered by the Court, Benihana National
19 Corp. shall provide Plaintiff with the names and corresponding restaurant locations for all
20 Salaried Managers who worked at any of Benihana National Corp.'s six Benihana branded,
21 teppanyaki-style restaurants in California ("Contact List") since February 14, 2007;
- 22 3. Once a form of letter has been approved by the Court and the Contact List has been
23 provided to Plaintiffs' counsel, they shall address a letter to each Salaried Manager on the
24 Contact List and deliver these letters to Defendant's counsel;
- 25 4. Defendant's counsel shall cause these letters to be delivered to the Salaried Managers
26 within 5 business days after the letters are delivered to Defendant's counsel. As for former
27 Salaried Managers, Defendant shall mail such letters to their last known address;

1 5. As indicated in the transcript from the October 3, 2011 hearing neither Defendant nor its
2 counsel shall attempt in any way to dissuade putative class members from contacting
3 Plaintiffs' counsel;
4 6. In strict compliance with the Court's instructions set forth at the hearing on October 13,
5 2011, plaintiffs' counsel is permitted to go to the Benihana National Corp. locations where
6 Salaried Managers work to try to talk to them outside the restaurant so long as Plaintiffs'
7 counsel does not interfere with their work duties or Benihana business operations, and
8 informs the putative class members that they are under no obligation to talk to Plaintiffs'
9 counsel. Benihana is not obliged to provide time off to employees to meet with Plaintiffs'
10 counsel or space at any of its facilities for interviews;
11 7. Plaintiffs' counsel may subpoena for deposition any Salaried Manager who declines to talk
12 with Plaintiffs' counsel. If Defendant's counsel declines to accept service of the subpoena
13 on the putative class member's behalf, then Defendant's counsel is required to give
14 Plaintiffs' counsel the putative class member's home address so that Plaintiffs' counsel can
15 serve the subpoena;
16 8. The Contact List, and any contact information provided by Defendant's counsel for
17 purposes of Plaintiffs' service of a subpoena pursuant to this Order, shall be subject to the
18 terms of the Protective Order in this case and used only for purposes of the present lawsuit;
19 9. Defendant is not presently required to provide contact information for Salaried Managers
20 at its subsidiaries, because the issue is not ripe for decision.

21 **IT IS SO ORDERED.**

22 Dated: October 13, 2011



23 _____
24 William Alsup
25 _____
26 UNITED STATES DISTRICT JUDGE
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