

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

BENIHANA NATIONAL
CORPORATION, INC.,

Defendant.

No. C 11-01272 WHA

**ORDER REGARDING
DISCOVERY LETTERS**

On January 9, 2012, plaintiffs filed a discovery dispute letter requesting a protective order precluding defendant Benihana National Corporation from proceeding with class member depositions altogether, or in the alternative, from proceeding with the depositions as currently noticed. Defendant filed a response letter today.

Pursuant to an order filed concurrently herewith, the briefing schedule for the class certification motion has been enlarged. The response brief is now due February 6 and the reply is due February 21. Given this enlarged briefing schedule, there is no need to proceed with the depositions noticed for January 11, 12, 13, and 14, especially given the fact that the subpoenas to notice the depositions were served on January 6 and January 9, due to defendant's attempt to complete the depositions prior to the previous due date of their opposition brief. Defendant shall not proceed with the depositions as currently noticed. Defendant must renote their depositions

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

in compliance with the Federal Rules of Civil Procedure and the Supplemental Order filed in this action.

Plaintiffs also contend that defendant should be precluded from deposing absentee class members because this would “undermine one of the advantages of the class device, which in appropriate cases, allows parties and the Court to adjudicate liability as to a group without requiring individual testimony from class members” (Br. 3). Defendant seeks to depose the 11 absent class members who submitted declarations in support of the motion for class certification. Defendant is permitted to take the deposition of absent class members but is not permitted, at this time, to take more than ten depositions in total.

IT IS SO ORDERED.

Dated: January 10, 2012.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE