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4 IN THE UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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7 MONITA SHARMA, et al.,  
8 Plaintiffs,  
9 v.  
10 BMW OF NORTH AMERICA LLC,  
11 Defendant.

Case No. [13-cv-02274-MMC](#)

**ORDER DENYING PLAINTIFFS'  
ADMINISTRATIVE MOTION TO STAY  
BRIEFING ON DEFENDANT'S MOTION  
TO DISMISS AND MOTION FOR  
SUMMARY JUDGMENT; SETTING  
BRIEFING SCHEDULE AND HEARING**

Re: Dkt. No. 125

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13 Before the Court is plaintiffs' "Administrative Motion to Stay Briefing on  
14 Defendant's Motion for Summary Judgment," filed February 5, 2016. Defendant has filed  
15 opposition. Having read and considered the papers filed in support of and in opposition  
16 to the motion, the Court rules as follows.

17 On January 28, 2016, defendant filed a "Motion to Dismiss Plaintiffs' Claims for  
18 Lack of Standing and Motion for Summary Judgment" (hereinafter, "MSJ"). By the instant  
19 motion, plaintiffs seek an order staying briefing on the MSJ until after the Court has ruled  
20 on a motion for class certification that plaintiffs intend to file in the future, or, alternatively,  
21 until after certain discovery matters have been resolved. The Court finds plaintiffs have  
22 not made a sufficient showing to support a stay under either asserted ground.

23 First, the Court finds unpersuasive plaintiffs' argument that the MSJ is procedurally  
24 improper because it was filed prior to the Court's consideration of an anticipated motion  
25 for class certification. "Unless a different time is set by local rule or the court orders  
26 otherwise, a party may file a motion for summary judgment at any time until 30 days after  
27 the close of all discovery." See Fed. R. Civ. P. 56(b). In this district, there is no local rule  
28

1 specifying the time at which a motion for summary judgment may be filed and no  
2 deadline has been set by the Court for the completion of expert discovery. Although  
3 plaintiffs assert that defendant's "summary judgment motion has been scheduled after  
4 class certification" (see Pls.' Mot. at 5:15), neither of the scheduling orders issued to date,  
5 specifically, the initial scheduling order, filed January 29, 2015, and the amended  
6 scheduling order, filed September 10, 2015, includes any reference to the timing of a  
7 motion for summary judgment, much less a restriction on when such a motion may be  
8 filed.<sup>1</sup>

9 Second, the Court finds unpersuasive plaintiffs' argument that the MSJ should not  
10 be briefed and heard until such time as all outstanding discovery disputes are resolved<sup>2</sup>  
11 and plaintiffs have taken the deposition of one of defendant's former employees.

12 Pursuant to Rule 56(d), "[i]f a nonmovant shows by affidavit or declaration that, for  
13 specified reasons, it cannot present facts essential to justify its opposition [to a motion for  
14 summary judgment]," the district court may "defer considering the motion." See Fed. R.  
15 Civ. P. 56(d). To be entitled to such relief, the nonmovant must "specifically identif[y] . . .  
16 relevant information," must show "there is some basis for believing that the information  
17 sought actually exists," and must show how the identified information "would prevent  
18 summary judgment." See Employers Teamsters Local Nos. 175 & 505 Pension Trust

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20 <sup>1</sup>Plaintiffs correctly observe that, in the Joint Case Management Statement, filed  
21 January 16, 2015, the parties proposed a schedule wherein the "[d]ispositive motions  
22 due" date was "50 days" after the "[h]earing on [p]laintiffs' anticipated motion for class  
certification." (See Joint Case Management Statement at 9.) The Court, however, did  
not adopt that part of the proposed schedule.

23 <sup>2</sup>Subsequent to the filing of the instant motion, Magistrate Judge Kandis A.  
24 Westmore, by order filed March 15, 2016, resolved the parties' outstanding discovery  
25 disputes. To the extent said order resolves the discovery disputes referenced therein as  
26 concerning "document retention policies" and "design, manufacturing, and testing  
27 documents" (see Order Regarding Discovery Letter Briefs at 4:2 - 10:3), the order is final,  
28 as no party filed an objection to those portions of the order within fourteen days of March  
15, 2016. See Fed. R. Civ. P. 72(a) (setting forth deadline to object to nondispositive  
order of magistrate judge). To the extent the order resolves the discovery dispute  
referenced therein as concerning "limited discovery responses" (see Order Regarding  
Discovery Letter Briefs at 10:4 - 12:5), the order is, arguably, not final, as the Court, by  
order filed concurrently herewith, has denied plaintiffs' objections thereto without  
prejudice to plaintiffs' filing a motion for leave to file a motion for reconsideration.

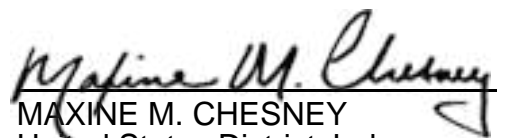
1 Fund v. Clorox Co., 353 F.3d 1125, 1129-30 (9th Cir. 2004) (internal quotations and  
2 citations omitted). The declaration filed by plaintiffs in support of the instant motion,  
3 however, although identifying in general terms the nature of the discovery disputes and  
4 naming the former employee whom plaintiffs seek to depose (see Kershaw Decl., filed  
5 February 5, 2016, ¶¶ 4, 5), fails to identify any facts plaintiff believe they might obtain by  
6 further discovery, let alone how such facts would be sufficient to preclude summary  
7 judgment.

8 Accordingly, plaintiffs' administrative motion to stay briefing on defendant's MSJ is  
9 hereby DENIED, and the Court sets the following briefing schedule and hearing date for  
10 the MSJ:

- 11 1. No later than April 15, 2016, defendant shall file a supplemental memorandum,  
12 not to exceed five pages in length, excluding exhibits, setting forth its argument as to the  
13 Third Claim for Relief.<sup>3</sup>
- 14 2. No later than May 6, 2016, plaintiffs shall file their opposition to the MSJ.<sup>4</sup>
- 15 3. No later than May 20, 2016, defendant shall file its reply.
- 16 4. The hearing on the MSJ is set for June 3, 2016, at 9:00 a.m.

17 **IT IS SO ORDERED.**

18  
19 Dated: April 1, 2016

  
MAXINE M. CHESNEY  
United States District Judge

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21  
22 <sup>3</sup>By order filed January 6, 2015, the Court dismissed the Third Claim for Relief.  
23 Thereafter, on March 14, 2016, after defendant had filed the MSJ, the Court granted  
24 plaintiffs' motion for reconsideration and vacated said dismissal. In its opposition to  
25 plaintiffs' motion for reconsideration, defendant, without further elaboration, stated that its  
26 arguments in the MSJ would also apply to the Third Claim for Relief. To afford plaintiffs  
adequate notice of the basis for defendant's motion, the Court finds it appropriate to  
direct defendant to file a supplemental memorandum setting forth its argument as to the  
Third Claim for Relief.

27 <sup>4</sup>By order filed February 5, 2016, the Court approved the parties' stipulation that, in  
28 the event a stay were denied, plaintiffs would file opposition to the MSJ no later than two  
weeks after such denial. Given the above-referenced supplement, however, the Court  
has extended that deadline.