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2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION

5 JAMES BLACKMON, an individual; and
6 JOHN GRAY, an individual,

7 Plaintiffs,

8 vs.

9 GLENN TOBIAS, et al.,

10 Defendants.

Case No: C 11-2853 SBA

ORDER

Dkt. 78, 79


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12 On October 21, 2011, the parties submitted a letter brief to Magistrate Judge Laurel
13 Beeler, the assigned discovery magistrate, in which the Tobias Defendants seek a protective
14 order with respect to a third party subpoena served by Plaintiffs on Bank of America. See
15 Dkt. 78, 79. In part, the Tobias Defendants argue that discovery concerning banking
16 records described in the subpoena is premature until the Court rules on their motion to
17 dismiss, which is scheduled for hearing on January 12, 2012. The question of whether
18 discovery is premature or should be stayed is for the district court, as opposed to the
19 discovery magistrate, to decide. Therefore, the Court considers this discrete issue.

20 Federal Rule of Civil Procedure 26(d)(1) provides that “[a] party may not seek
21 discovery from any source before the parties have conferred as required by Rule 26(f),...”
22 The record indicates that the parties conducted their Rule 26(f) conference on September 1,
23 2011. Dkt. 43 at 1. As such, the parties are free to engage in discovery. See Fed. R. Civ.
24 P. 26(d)(1); Cotton v. City of Eureka, No. C 08-4386 SBA, 2010 WL 2382255, at *2 n.2
25 (N.D. Cal. June 10, 2010). To the extent that the Tobias Defendants’ motion for protective
26 order is construed as a motion to stay discovery, the Court notes that the pendency of a
27 motion to dismiss, standing alone, does not present a compelling reason to stay discovery.
28 In essence, the Tobias Defendants’ position is that if their motion is granted, there will be no

1 need to conduct discovery. However, such an argument could be made in *every* case in which
2 a motion to dismiss has been filed. As such, the Court is unpersuaded, based on the arguments
3 presented, that a stay of discovery is warranted. The remaining arguments regarding the
4 Tobias Defendants' motion for protective order may be resolved by Magistrate Judge Beeler.
5 Civ. L.R. 72-1.

6 IT IS SO ORDERED.

7 Dated: November 14, 2011


SAUNDRA BROWN ARMSTRONG
United States District Judge