

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00073-ZLW-KLM

JAMES E. PRESTON

Plaintiff,

v.

CAPITAL ONE AUTO FINANCE, INC., a Texas corporation, a/k/a SUMMIT ACCEPTANCE CORPORATION,

Defendant.

MINUTE ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on **Capital One Auto Finance, Inc.'s Motion for Reconsideration of Recommendation by United States Magistrate Judge Regarding Motion to Dismiss** [Docket No. 39; Filed May 21, 2010] (the "Motion"). Pursuant to the Motion, Defendant requests that the Court recommend that Defendant's Motion to Dismiss [#10] remain pending to be handled on remand rather than recommend that it be dismissed as moot.

IT IS HEREBY **ORDERED** that the Motion is **DENIED**. Defendant has failed to offer a basis for reconsideration consistent with the standard utilized by the Tenth Circuit. See *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (noting that reconsideration may be warranted to address "(1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice"). Moreover, Defendant fails to explain why it cannot simply refile its Motion to Dismiss in the state court proceedings.

Dated: May 24, 2010