

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 12-cv-02645-WJM-BNB

MONITA MCKINNEY,

Plaintiff,

v.

ONEWEST BANK, FSB,

Defendant.

ORDER

This matter arises on **Plaintiff's Notice of Motion and Motion to Compel Discovery** [Doc. #20, filed 11/26/2012] (the "Motion"). The Motion is DENIED.

In her "Declaration in Support of Motion to Compel Discovery" [Doc. #23], the plaintiff states that because the defendants refused to meet and confer with her under Rule 26(f), she is entitled to file a motion to compel discovery. She does not cite any authority for this erroneous statement, nor does she identify the discovery she wishes to compel.

The defendants have filed a motion to dismiss [Doc. #11] which was fully briefed on December 13, 2012 [Doc. #27]. A scheduling conference will not be set until the motion to dismiss has been resolved. Thus, it is premature for the parties to engage in discovery. Fed. R. Civ. P. 26(d).

In addition, the rules of civil procedure permit a party to file a motion to compel only after attempts to obtain discovery pursuant to the appropriate rules of discovery have failed.

Fed. R. Civ. P. 37. Therefore, prior to filing any future motions to compel, the plaintiff must first attempt to obtain the discovery pursuant to the rules. Accordingly,

IT IS ORDERED that the Motion is DENIED.

Dated January 28, 2013.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge