

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

WAYNE PHILLIPS,

Plaintiff,

CIVIL ACTION NO. 08-CV-13978

vs.

DISTRICT JUDGE LAWRENCE P. ZATKOFF

**UNITED PARCEL SERVICE,
INC., et al.,**

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

OPINION AND ORDER DENYING PLAINTIFF'S MOTION TO COMPEL

This matter comes before the Court on Plaintiff's Motion to Compel Responses to Requests to Produce filed on April 13, 2009. (Docket no. 32). Defendants have responded to the motion. (Docket nos. 36, 37). Plaintiff filed a Reply brief. (Docket no. 38). This motion has been referred to the undersigned for decision. (Docket no. 35). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(e). Plaintiff's Motion to Compel is now ready for ruling.

Plaintiff moves to compel Defendants to respond to Requests for Production of Documents served on Defendants on March 9, 2009. (Docket no. 32 exs. B & C). Defendants argue that discovery is premature in this action because there are pending motions to dismiss and because the parties have not yet conferred as required by Fed. R. Civ. P. 26(f). *See* Fed. R. Civ. P. 26(d)(1) (party may not seek discovery before parties have conferred except in limited situations). Plaintiff responds that a conference should already have occurred pursuant to Rule 26(f). (Docket no. 38).

The district court resolved the pending motions to dismiss by denying them on July 10, 2009. (Docket no. 39). Therefore, those motions are no longer an impediment to the parties conducting discovery. However, Fed. R. Civ. P. 26(d)(1) precludes discovery before the parties have conferred

as required by Rule 26(f), except in four situations. There is no showing that any of these four situations exist in this action. Defendant UPS states that the parties have not yet conferred, and Plaintiff does not dispute this assertion. Plaintiff instead argues that the parties should have already conferred. Even if that is the case, Rule 26(f) does not state that discovery proceeds absent a timely Rule 26(f) conference.

It is clear that discovery will soon commence in this action. The parties may stipulate to begin discovery now that the motions to dismiss are resolved. *See* Fed. R. Civ. P. 26(d) (discovery may proceed prior to Rule 26(f) conference by stipulation). Otherwise, the district court has ordered Defendants to answer Plaintiff's Complaint within 14 days of its July 10, 2009 Order. (Docket no. 39). Presumably following the filing of the Answers, a discovery schedule will be set by the court. Accordingly, Plaintiff's Motion to Compel will be denied as premature.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Compel (docket no. 32) be **DENIED**.

NOTICE TO PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: July 13, 2009

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Opinion and Order was served upon Counsel of Record on this date.

Dated: July 13, 2009

s/ Mona K. Majzoub
Courtroom Deputy