

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

EFRAIN MUNOZ, *individually and on
behalf of all others similarly situated,
et al.*,

Plaintiffs,

v.

PHH MORTGAGE CORPORATION,
et al.,

Defendants.

No. 1:08-cv-00759-MMB-BAM

**ORDER RESPECTING
PLAINTIFFS' MOTION
TO STRIKE AND PRECLUDE
EVIDENCE AND/OR
TESTIMONY REGARDING
INDIVIDUAL CLASS MEMBER
PAYMENT HISTORIES**

Plaintiffs move (ECF 487) for an order to “strike from the record and preclude from trial any evidence and/or testimony concerning the payment histories of Plaintiffs Munoz, Lovette, and Hoffman, and the accompanying Declaration of Gina Feezer cited in Defendants’ [motion *in limine*] #1.”¹ ECF 487, at 1.

Defendants, in response, acknowledge that the material in question does not appear on either side’s trial exhibit list and was not produced during fact discovery, but they contend that the reason for attaching the evidence was to demonstrate “the nature of the evidence Plaintiffs *should have* amassed to prove their damages under RESPA, and that the record is devoid of such evidence.” ECF 502, at 1 (emphasis in original). They contend that because they

¹ The title of Defendants’ motion *in limine* #1 refers to a request “for an order on the appropriate method for calculating and proving damages.” ECF 469, cover page.

1 have not sought to make the evidence in question part of the trial record, there
2 is nothing to exclude, such that the part of the motion relating to the trial rec-
3 ord “is both moot and premature.” *Id.* at 1–2.

4 In reply, Plaintiffs argue that evidence relating to individual payment
5 histories would be irrelevant based on prior court orders. ECF 519, at 2–3.

6 Plaintiffs’ motion to strike therefore presents two issues: (1) Should De-
7 fendants be precluded from introducing the evidence in question at trial?
8 (2) Should the evidence in question be stricken from the record for purposes of
9 Defendants’ motion *in limine* #1?

10 As to the first issue, Defendants affirmatively state that they are not
11 seeking to admit the evidence for use at trial, and they acknowledge that the
12 evidence was not disclosed in the manner required by the final pretrial order
13 (ECF 456) for evidence to be introduced at trial. Accordingly, Plaintiffs’ motion
14 is moot insofar as it seeks to preclude the introduction of this evidence at trial.

15 As to the second issue, Defendants cited the evidence in question in sup-
16 port of their motion *in limine* #1 for demonstrative purposes. The court decided
17 that motion *in limine* as a matter of law without relying on the attached evi-
18 dence, which simply proved unnecessary to resolving the motion. There is thus
19 no need to strike the evidence from the motion record, and Plaintiffs’ motion is
20 moot insofar as it seeks to do so.

1 Therefore, it is hereby **ORDERED** that the motion titled “Plaintiffs’ mo-
2 tion for an order striking from the record and precluding from trial evidence
3 and/or testimony concerning individual class member payment histories cited
4 in Defendants’ motion in limine no. 1 and incorporated memorandum of law”
5 (ECF 487) is **DENIED as moot**.

6 Dated: February 1, 2022

/s/ M. Miller Baker
M. Miller Baker, Judge²

7

² Judge of the United States Court of International Trade, sitting by designation.