

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JULIA BERNSTEIN, ET AL.,
Plaintiffs,
v.
VIRGIN AMERICA, INC.,
Defendant.

Case No. [15-cv-02277-JST](#) (JSC)

**ORDER DENYING MOTION TO
STRIKE**

Re: Dkt. Nos. 239, 240, 242

After reviewing the parties' separate letter briefs, and after having the benefit of oral argument on January 29, 2018, Defendant's motion to strike David Breashers' supplemental expert report is DENIED. The supplement corrects an error in the damages calculation in the original report based on a misinterpretation of some of Virgin's data. Plaintiffs were obligated to provide a supplemental expert report. *See* Fed. R. Civ. P. 26(e)(2); *see also Enplas Display Device Corp. v. Seoul Semiconductor Co., Ltd.*, 2015 WL 13037241 *1 (N.D. Cal. Dec. 21, 2015) ("Rule 26(e)(2) clearly envisions the possibility that an error could be made in an expert report that would come to light only after the expert's deposition"). And the supplement was timely. *See* Fed. R. Civ. P. 26(e)(2), (3). Further, Virgin recognized the appropriateness of the supplement by offering to agree to its submission provided Plaintiffs agreed to allow it to call Mr. Newbold as a witness at trial. As Virgin rejected Plaintiffs' repeated offers to further depose Mr. Breashers, such relief is not proper now.

IT IS SO ORDERED.

Dated: January 29, 2018


JACQUELINE SCOTT CORLEY
United States Magistrate Judge