



1 time in Equifax’s response to Plaintiff’s motion for summary judgment. – despite the fact that  
2 they were requested in discovery and Equifax’s 30(b)(6) testified in a manner which necessitated  
3 their disclosure under Rule 26. Moreover, even after discovery closed, the parties conducted a  
4 telephonic meet-and-confer regarding the confidentiality of all exhibits shortly before submission  
5 of their respective motions for summary judgment; at that time, Equifax never disclosed its  
6 intention to submit Exhibit 9A under seal, although Exhibit 9A was subsequently filed under seal  
7 in Equifax’s response.

8 According to Plaintiff, it remains unclear when Equifax first discovered the existence of  
9 Exhibit 9A, although it appears to be a document executed several years ago. Moreover, Exhibit  
10 9A refers to an entirely new subset of Equifax documents, particularly “Transaction Document  
11 Number 2,” which suggests that to the degree Exhibit 9A purports to be a “contract” between  
12 Equifax and its third-party mailing vendor, it is an out-of-date version of the same. Therefore, it  
13 is Plaintiff’s contention that Exhibit 9A was not only untimely provided, but cannot be used for  
14 any of the propositions it purports to establish.

15 As for Exhibit 9B, Equifax has not presented any argument for why it never produced the  
16 “reinvestigation results” in discovery. Regardless, it is Plaintiff’s position that these results are  
17 apropos of nothing, as Equifax’s third party mailing vendor has already affirmed that it has no  
18 evidence that the “reinvestigation results” were ever actually mailed to Plaintiff at any time.

### 19 **Summary of Defendant’s Argument**

20 It is Equifax’s position that the FIS Card Agreement was never requested by Plaintiff  
21 during discovery and only became relevant because of the arguments made for the first time in  
22 Plaintiff’s Motion for Partial Summary Judgment, and that such submission does not contradict  
23 Equifax’s prior testimony. [Doc. 26.] For instance, Equifax’s representative testified to the fact  
24 that Equifax contracts with FIS Card for print-and-mail services in her initial deposition. This  
25 fact has never been in dispute. Further, Ms. Smith testified that the files are transmitted  
26 electronically to FIS Card in an electronic format, and it is Equifax’s position that her Declaration  
27 only clarifies her testimony. Nonetheless, Equifax has agreed to withdraw both Exhibits that have  
28 resulted in the above-referenced dispute so as not to waste the Court’s resources with unnecessary

1 motion practice or to distract the Court from the material issues.

2 In an effort to resolve the parties' dispute, counsel for the parties have met and conferred  
3 in good faith, and have reached an agreement to the items below. This stipulation is filed in good  
4 faith and not intended to cause delay.

5 Accordingly, IT IS HEREBY STIPULATED AND AGREED, by and among counsel, as  
6 follows:

- 7 1. Equifax shall be permitted to withdraw from the record of this case the EFX Response Brief  
8 [Doc. 37], including the Smith Declaration [37-9] and accompanying Exhibits 9A and 9B,  
9 within three days of the Court's execution of the instant stipulation. At that time, Equifax  
10 shall be permitted to file a corrected and revised EFX Response Brief and Smith Declaration  
11 in the form previously exchanged between counsel for the parties on October 6, 2017. Such  
12 filing will specifically withdraw Exhibits 9A and 9B, and the references to each, from the  
13 EFX Response Brief and the Smith Declaration.
- 14 2. Plaintiff's deadline for filing his Reply in support of his Motion for Summary Judgment  
15 (Doc. 30) shall be extended two (2) weeks from the date of Equifax's corrective filing  
16 identified above.
- 17 3. By agreeing to this Stipulation, Plaintiff is not waiving any right to challenge the corrected  
18 filing of the EFX Response Brief or to seek any relief it deems appropriate in replying to it,

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1 and Plaintiff expressly reserves the right to do so. Equifax likewise does not waive any right  
2 to respond to the relief Plaintiff may seek in a future reply.

3 Dated: October 9, 2017

4 **IT IS SO STIPULATED:**

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27	<i>Attorneys for Plaintiff</i>	
28		

21 **IT IS SO ORDERED:**

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24 RICHARD F. BOULWARE, II  
25 United States District Judge

26 DATED: October 12, 2017.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been served this 9<sup>th</sup> day of October, 2017, via ECF, upon:

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An employee of Snell & Wilmer