

1 respective motions for summary judgment, denies Plaintiff's Motion for class certification, and
2 grants all motions to seal. The remaining motions and appeals are dismissed as moot.
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4 **PROCEDURAL BACKGROUND**

5 David Leoni sued Defendant Experian Information Solutions on May 18, 2017. ECF No.
6 1. Plaintiff filed his operative First Amended Complaint on September 28, 2017. The original
7 complaint also named Military Star as a Defendant, however Plaintiff's amended complaint
8 terminated Military Star's presence in this action. ECF No. 17. In the amended complaint, Plaintiff
9 asserts one cause of action for violations of the Fair Credit Reporting Act (FCRA) on behalf of
10 Leoni and a proposed class and a second cause of action as to the named plaintiff only for
11 Defendant Experian's alleged FCRA violations.
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13 Now both parties move for summary judgment. ECF Nos. 90, 98. Both parties have
14 opposed and filed corresponding replies. ECF Nos. 109, 110, 112, 115. Plaintiff has also filed an
15 appeal of the Honorable Cam Ferenbach's prior order on October 10, 2018 denying Plaintiff's
16 Motion to Compel. ECF No. 89. Defendant has opposed that appeal. ECF No. 101. In addition,
17 Plaintiff has also filed three motions to seal or redact portions of the record, a motion to strike or
18 leave to seek surreply to Defendant's motion for summary judgment, a motion for leave to submit
19 supplemental evidence regarding the appeal of the Court's October 10, 2018 order, and a motion
20 for class certification pursuant to Fed. R. Civ. P. 23 that are also now before the Court. ECF Nos.
21 92, 94, 96, 117, 119. Defendant has responded to both the motion for class certification and two
22 of the motions to seal. ECF Nos. 104, 105, 106. Finally, Defendant has also filed three motions to
23 seal. ECF No. 100 103, 114.
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26 **II. FACTUAL BACKGROUND**

27 **a. Undisputed Facts**

28 The Court finds the following facts to be undisputed.

1 On or about March 22, 2011, Plaintiff filed for Chapter 13 Bankruptcy in Nevada. Leoni's
2 debt obligation to nonparty Military Star was scheduled in the bankruptcy. On May 13, 2016,
3 Leoni's Chapter 13 Plan was confirmed, and Leoni's debt to Military Star was discharged on
4 August 1, 2016. On August 31, 2016, Leoni requested and received a copy of his Experian
5 consumer disclosure pursuant to 15 U.S.C. §1681g(a). The initial Experian consumer disclosure
6 listed in its trade line for Military Star that the recent balance was "\$5,932 as of 5/27/2013" and
7 listed the account's status as: "Petition for Chapter 13 Bankruptcy/Never late. \$5932 written off."
8 ECF No. 90, Ex. 4. Below the account history was a note that the consumer: "filed Chapter 13
9 bankruptcy on Mar 31, 2011." ECF No. 90, Ex. 4. Leoni sent a dispute letter dated October 20,
10 2016 to the consumer reporting agency Experian. The letter stated in part: "My credit report shows
11 you are inaccurately reporting balances owed for the month of May 2013 on this account . . . [t]his
12 information is incorrect because I owed a \$0 balance at the time this was reported . . . I performed
13 all obligations required to Military Star." ECF No. 90, Ex. 4. On November 7, 2016, Experian
14 contacted Military Star and sent it an ACDV (automated consumer dispute verification) form
15 regarding Plaintiff's dispute. Military Star responded and sent its ACDV response to Experian on
16 or about November 8, 2016. On November 24, 2016, Experian mailed Leoni the results of
17 reinvestigation. The Military Star tradeline correctly listed the balance owed as \$0, and correctly
18 noted that the status of the account was "[d]ischarged through Bankruptcy Chapter 13." However,
19 the account history stated that the debt had been "included in Chapter 13 Bankruptcy on Nov 08,
20 2016," which was not the date on which Plaintiff had actually filed his bankruptcy petition.

21
22 **b. Disputed Facts**

23 The parties dispute the legal effect of the circumstances described.

24 **III. LEGAL STANDARD**

25 a. Summary Judgment

26 Summary judgment is appropriate when the pleadings, depositions, answers to
27 interrogatories, and admissions on file, together with the affidavits, if any, show "that there is no
28 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of

1 law.’ Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When
2 considering the propriety of summary judgment, the court views all facts and draws all inferences
3 in the light most favorable to the nonmoving party. Gonzalez v. City of Anaheim, 747 F.3d 789,
4 793 (9th Cir. 2014).

5 If the movant has carried its burden, the non-moving party “must do more than simply
6 show that there is some metaphysical doubt as to the material facts Where the record taken
7 as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine
8 issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (quotation marks
9 omitted). It is improper for the Court to resolve genuine factual disputes or make credibility
10 determinations at the summary judgment stage. Zetwick v. Cty. of Yolo, 850 F.3d 436, 441 (9th
11 Cir. 2017) (citations omitted).

12
13 b. Class Certification Legal Standard

14 In order to qualify for class certification, the proposed class must meet all the
15 requirements of Federal Rule of Procedure 23(a) and at least one of the requirements of Rule
16 23(b). Fed. R. Civ. P. 23(a), (b). The proponents of the class bear the burden of demonstrating
17 that all the prerequisites for class designation are met. See Meyer v. Portfolio Recovery Assocs.,
18 LLC, 707 F.3d 1036, 1041 (9th Cir. 2012), cert. denied, 707 F.3d 1036, (2013). Although a court
19 should not engage in a trial on the merits at the class certification stage,
20 “[t]he class determination generally involves considerations that are enmeshed in the factual and
21 legal issues comprising the plaintiff’s cause of action.” Wal-Mart Stores, Inc. v. Dukes, 564 U.S.
22 338, 351, (2011) (internal quotation marks and citation omitted). The four threshold
23 requirements under Rule 23(a) are that:

- 24 (1) the class is so numerous that joinder of all members is impracticable;
25 (2) there are questions of law or fact common to the class;
26 (3) the claims or defenses of the representative parties are typical of the claims or
27 defenses of the class; and

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1 (4) the representative parties will fairly and adequately protect the interests of the class.
2 Fed. R. Civ. P. 23(a).

3 The Supreme Court refers to these elements as “numerosity,” “commonality,”
4 “typicality,” and “adequacy of representation,” respectively. Amchem Products, Inc. v. Windsor,
5 521 U.S. 591 (1997). In this case, Plaintiff moves for class certification as a
6 damages class under Rule 23(b)(3). Certification is appropriate under Rule 23(b)(3) if the court
7 finds that “questions of law or fact common to the class members predominate over any
8 questions affecting only individual members, and that a class action is superior to other available
9 methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

10 **IV. DISCUSSION**

11 a. The Fair Credit Reporting Act

12 “Congress enacted the Fair Credit Reporting Act [FCRA] in 1970 ‘to ensure fair and
13 accurate credit reporting, promote efficiency in the banking system, and protect consumer
14 privacy.’” Gorman v. Wolpoff & Abramson, LLP, 584 F.3d 1147, 1153 (9th Cir.
15 2009) (quoting Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, (2007)). “As an important means to
16 this end, the Act sought to make ‘consumer reporting agencies exercise their grave responsibilities
17 [in assembling and evaluating consumers’ credit, and disseminating information about
18 consumers’ credit] with fairness, impartiality, and a respect for the consumer’s right to
19 privacy.’” Id. (alteration in original) (quoting 15 U.S.C. § 1681(a)(4)).

20 The three major nationwide consumer reporting agencies (Experian, TransUnion, and
21 Equifax) review trade line disputes through an electronic information network called e-OSCAR
22 (the Online Solution for Complete and Accurate Reporting). Consumer Fin. Prot. Bureau, Key
23 Dimensions and Processes in the U.S. Credit Reporting System: A Review of how the Nation’s
24 Largest Credit Bureaus Manage Consumer Data, 32 (2012). After a consumer notifies a consumer
25 reporting agency of a dispute, the consumer reporting agency internally reviews the dispute, and
26 if it cannot be resolved internally, forwards the information to the furnisher (the original source of
27 the information) using an electronic form called an automated consumer dispute verification form

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1 (ACDV). Id. The furnisher then investigates the response and sends it back to the consumer
2 reporting agency. Id.

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4 b. *Leoni and Experian’s Motions for Summary Judgment*

5 The Court addresses the parties’ cross-motions for summary judgment first.

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7 i. Experian’s Liability as to Leoni’s Initial Disclosure Claim (15 U.S.C. §
8 1681g)

9 Leoni first alleges that Experian violated section 1681g of the FCRA. Section 1681g
10 requires in part that “every consumer reporting agency shall, upon request . . . clearly and
11 accurately disclose to the consumer . . . all information in the consumer’s file at the time of the
12 request . . .” 15 U.S.C. § 1681g(a)(1). A “consumer’s file includes ‘all information on the
13 consumer that is recorded and retained by a [consumer reporting agency] that might be furnished,
14 or has been furnished, in a consumer report on that customer.” Shaw v. Experian Info Sols. Inc.,
15 891 F.3d 749, 759 (9th Cir. 2018) (internal citations omitted). For the following reasons, the Court
16 finds that Experian violated section 1681g.

17 As a preliminary matter, Experian argues that the “included in Chapter 13 Bankruptcy on
18 Nov 08, 2016” line is not included in consumer reports disclosed to third parties and thus is not a
19 relevant consideration under section 1681g. Def.’s Mot. Summ. J., 10, ECF No. 98. The Court
20 disagrees with this analysis.

21 Experian’s reinvestigation results as mailed to Leoni constituted a consumer disclosure for
22 the purposes of section 1681g(a)(1). But the results also triggered the reinvestigation procedures
23 outlined in section 1681i of the FCRA , which requires the consumer reporting agency to disclose
24 in its notice of the results of reinvestigation “a consumer report that is based upon the *consumer’s*
25 file as that file is revised as a result of the reinvestigation.” 15 U.S.C. § 1681i(a)(6)B(ii) (emphasis
26 added). The parties dispute whether the reinvestigation results sent to Leoni were a consumer
27 disclosure as described in section 1681g and a consumer report as required to be sent in response
28 to consumer disputes pursuant to section 1681i(a)(6)B(ii).

1 Ultimately the Court agrees with Plaintiff that the reinvestigation results Experian sent
2 Leoni were both a consumer disclosure as described in section 1681g and also a consumer report
3 sent pursuant to 1681i(a)(6)B(ii). The reinvestigation results clearly state that the information
4 contained therein could and would be sent to any entity that has reviewed the consumer's credit
5 report within the last two years for employment purposes upon the consumer's request. ECF
6 No.90-7 ("If there has been a change to your credit history resulting from our reinvestigation . . .
7 you may request that Experian send an updated report to those who received your report within
8 the last two years for employment purposes, or within the last six months for any other purpose.").
9 This thus meets the definition of information that could be included in a consumer report, because
10 it includes information that "might be furnished, or has been furnished in a consumer report on
11 that consumer." Shaw, 891 F.3d, at 759. If Experian wants to assert that such information would
12 never be included in reports submitted to third parties, then it should not include that information
13 in reinvestigation results sent to consumers pursuant to section 1681i(a)(6)B(ii).

14 When considering whether a party has violated 1681g, the operative consideration is
15 whether "the disclosure is understandable to the average consumer," and whether the information
16 provided to the consumer was in a form that was both "clear and accurate." Shaw, 891 F.3d at 759.
17 Here the information was presented clearly but was not entirely accurate. While the Military Star
18 tradeline correctly showed a zero balance as is required after debts are discharged in bankruptcy,
19 it listed the wrong date on which the petition date was filed, stating that the debt had been "included
20 in Chapter 13 bankruptcy on Nov 08, 2016." This could be confusing or misleading because it
21 could imply that the consumer filed for bankruptcy on a different date than he actually did, or
22 given that the tradelines for other items list the correct date on which the petition was filed, could
23 imply that the consumer filed for bankruptcy twice. Consumers request disclosures pursuant to
24 section 1681g in order to compare the information in the credit file with their own personal
25 information. Shaw, 891 F.3d at 760 (citing Gillespie v. Equifax Info. Servs., LLC 484 F.3d 938,
26 941 (7th Cir. 2007)) ("The disclosure must be made in a manner sufficient to allow the consumer
27 to compare the disclosed information from the credit file against the consumer's personal
28 information in order to allow the consumer to determine the accuracy of the information set forth

1 in her credit file.”). For this reason, Experian’s argument that listing the incorrect date is not
2 confusing or misleading to the consumer because the consumer knows how many times he has
3 filed for bankruptcy misstates the relevant consideration. Def.’s Mot. Summ. J. 8-9, ECF No. 98.
4 The relevant consideration is not whether the consumer was subjectively misled or confused by
5 the information contained in the file, but whether the information contained in the file is objectively
6 inaccurate. The Court finds that the tradeline was inaccurate and grants summary judgment to
7 Leoni as to Experian’s liability on the 1681g claim.

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9 ii. Experian’s Liability as to Leoni’s Reasonable Procedures Claim (15
10 U.S.C. § 1681e(b))

11 Next the Court turns to Plaintiff Leoni’s 1681e(b) claim. Section 1681e(b) of the FCRA
12 requires the consumer reporting agency to “follow reasonable procedures to assure the maximum
13 possible accuracy of the information concerning the individual about whom the report relates.” 15
14 USC § 1681e(b). Liability under 1681e(b) “is predicated on the reasonableness of the credit
15 reporting agency's procedures in obtaining credit information.” Guimond v. Trans Union Credit
16 Info. Co., 45 F.3d 1329, 1333 (9th Cir. 1995). To bring a 1681e claim, the “consumer must present
17 evidence tending to show that a [CRA] prepared a report containing inaccurate
18 information.” Guimond, 45 F.3d at 1333. The consumer must also “first make a prima facie
19 showing of inaccurate reporting by the CRA.” Shaw, 891 F.3d at 756 (internal citations omitted).
20 Inaccurate for the purposes of FCRA means information that is either “patently incorrect” or is
21 “misleading in such a way and to such an extent that it can be expected to adversely affect credit
22 decisions.” Id. Once the consumer has made a prima facie showing of inaccuracy, he or she must
23 next show that the consumer reporting agency failed to follow reasonable procedures to assure the
24 maximum possible accuracy of the information. 15 U.S.C. § 1681e(b).

25 Experian falsely implies that a consumer must show that the information would be
26 transmitted to a third party in order to make out a section 1681e(b) claim. Def.’s Mot. Summ. J.
27 11, ECF No. 98. But the Ninth Circuit has explicitly held that proof of transmission to a third party
28 is not a prerequisite for making a 1681e(b) claim. Guimond, 45 F.3d at 1333 (“Accordingly the

1 district court erred in finding that any liability under 1681e(b) was predicated, as a matter of law,
2 on the occurrence of some event—denial of credit or transmission of the report to third parties—
3 resulting from the compilation and retention of erroneous information.”).

4 The Court finds Leoni has made a prima facie showing of inaccuracy. The “included in
5 Chapter 13 bankruptcy on Nov 08, 2016” line is patently incorrect in that it clearly misstates the
6 date on which the bankruptcy petition was filed. However, as explained above, the inquiry does
7 not end there. The consumer must also show that the consumer reporting agency’s procedures were
8 not reasonable.

9 The Ninth Circuit has not yet fully articulated a test for reasonableness of procedures in
10 this context. Other circuit courts findings on this matter are thus informative. The Seventh Circuit,
11 in the case Henson v. CSC Credit Servs., has noted that whether a credit reporting agency has a
12 duty to go beyond the original source (also called the furnisher) of the information, will depend on
13 whether the consumer has alerted the reporting agency of the furnisher’s possible unreliability and
14 whether the costs of verifying the accuracy of the furnisher outweigh the possible harm that
15 inaccurately reported information may cause the consumer. Henson v. CSC Credit Servs., 29 F.3d
16 280, 287 (7th Cir. 1994)

17 It is at this juncture that Plaintiff’s argument fails. The Court agrees with Experian that
18 Leoni has failed to show that Experian’s procedures were not reasonable. Use by consumer
19 reporting agencies of automated ACDV processes, such as the one Experian employed in this case,
20 does not, as a matter of law, inoculate consumer reporting agencies from section 1681e(b)
21 reasonableness claims. But Leoni has failed to provide any evidence showing that the furnisher,
22 Military Star, was unreliable in any way. In this case, the only notice that Experian had as to
23 Military Star’s potential unreliability as a furnisher was the dispute letter Leoni sent to Experian.
24 Leoni described his dispute as follows: “My credit report shows you are inaccurately reporting
25 balances owed for the month of May 2013 on this account . . . [t]his information is incorrect
26 because I owed a \$0 balance at the time this was reported . . . I performed all obligations required
27 to Military Star.” ECF No. 90, Ex. 4. The dispute letter does not mention Leoni’s previous
28 bankruptcy petition or subsequent discharge. Thus, Experian did not have any reason to believe

1 that the dates listed on Military Star’s ACDV were incorrect. Both sides do not dispute that Leoni
2 did not follow up directly with Experian after receiving the reinvestigation results, but instead filed
3 this instant lawsuit. The Court therefore finds that Experian’s credit reporting procedures as
4 outlined in this case were reasonable, and grants Experian summary judgment on this claim.

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6 iii. Experian’s Liability as to Leoni’s Reasonable Reinvestigation Claim
7 (15 U.S.C. § 1681i)

8 Lastly the Court examines Leoni’s claim that Experian violated section 1681i of the FCRA.
9 Section 1681i(a)(1)(A) outlines the scope of the reinvestigation required by consumer reporting
10 agencies. It states in part:

11 [I]f the completeness or accuracy of any item of information contained in a
12 consumer’s file at a [CRA] is disputed by the consumer and the consumer notifies
13 the agency directly . . . of such dispute, the agency shall, free of charge, conduct a
14 reasonable reinvestigation to determine whether the disputed information is
15 inaccurate and record the current status of the disputed information, or delete the
item from the file . . . before the end of the 30-day period beginning on the date on
which the agency receives the notice of the dispute from the consumer . . .

16 15 U.S.C. §1681i(a)(1)(A).

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18 As articulated in the previous section regarding Leoni’s section1681e(b) claim, Leoni’s
19 dispute letter mentions only the incorrect “write-off balance,” and does not mention Leoni’s
20 previous bankruptcy petition or subsequent discharge. It is not disputed that Experian updated the
21 tradeline to reflect the zero balance as the consumer had requested. The Court thus finds that
22 Experian’s reinvestigation, which included contacting the original furnisher and updating the
23 tradeline in light of Military Star’s ACDV response, was a reasonable reinvestigation of the only
24 issues raised in the dispute letter, and grants summary judgment in favor of Experian on this claim.
25 The Court also incorporates by reference its reasoning in Caseman v. Silver State Schs. Credit
26 Union, where the Court addressed this same issue. Caseman v. Silver State Schs. Credit Union No.
27 2:17-cv-00140-RFB-PAL, 2018 WL 3630484 (D. Nev. 2018).

28 iv. Experian’s § 1681g Violation Was Not Willful and Leoni Has Failed

1 Finally, Leoni has failed to allege any out-of-pocket expenses other than pre-litigation
2 costs. See Leoni Dep. 149:25 – 152:22, ECF No. 98-1 (describing how Leoni took time off from
3 work to go his attorneys’ office). Because no reasonable factfinder could find in favor of Leoni on
4 the question of damages, the Court awards Leoni no damages.

5 c. Class Certification

6 Leoni has also filed a motion for class certification pursuant to Fed. R. Civ. P. 23(a) and
7 23(b)(3). For the following reasons, this Court denies Plaintiff’s Motion for Class Certification in
8 its entirety.

9
10 i. Discussion

11 Plaintiff specifically seeks to certify the class under Fed. R. Civ. P. 23(b)(3), which certifies
12 classes in which the “court finds that the questions of law or fact common to class members
13 predominate over any question affecting only individual members, and that a class action is
14 superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed.
15 R. Civ. P. 23(b)(3). These requirements of 23(b)(3) are also called the “predominance” and
16 “superiority” requirements of 23(b)(3). Zinser v. Accufix Research Inst., Inc., 253 F.3d 1180, 1189
17 –93 (9th Cir. 2001). “Implicit in the satisfaction of the predominance test is the notion that the
18 adjudication of common issues will help achieve judicial economy.” Id. at 1189 (internal citations
19 omitted). When considering whether a class action is the superior device to use to resolve a dispute,
20 the Court should consider: 1) the interest of each member in “individually controlling the
21 prosecution or defense of separate actions”; 2) “the extent and nature of any litigation concerning
22 the controversy already commenced by or against members of the class; 3) “ the desirability or
23 undesirability of concentrating the litigation of the claims in the particular forum,” and 4) “the
24 difficulties likely to be encountered in the management of the class action.” Fed. R. Civ. P.
25 23(b)(3)(A) – (D). “[W]hen the complexities of class action treatment outweigh the benefits of
26 considering common issues in one trial, class action treatment is not the ‘superior’ method of
27 adjudication.” Zinser, 253 F.3d at 1192.
28

1 Leoni has failed to show that he can meet either the predominance or superiority
2 requirements of Rule 23(b)(3). To successfully make out 1681g disclosure claims, each class
3 member would have to show that the 1681g(1)(A) disclosure contained information that would
4 also be contained in a consumer report, pursuant to Shaw. Shaw v. Experian Info Sols. Inc., 891
5 F.3d 749, 760 (9th Cir. 2018). Named plaintiff Leoni met this requirement because the section
6 1681g disclosure he received was sent in response to a dispute letter, thus rendering it a consumer
7 report pursuant to the requirements of section 1681i(a)(6)B(ii). However, whether that same
8 finding applies to other class members requires individualized determinations for which common
9 questions of fact would not predominate and for which use of the class action device would not be
10 the superior method of adjudication. For this reason, class certification is denied.

11 d. Motions to Seal

12 In light of the voluminous amounts of sensitive information included in this case, including
13 Leoni's social security number and financially sensitive information and Experian's confidential
14 policy and procedure manuals, the Court grants all pending motions to seal in this matter.

15 e. Objection to the Court's October 9, 2019, Order and Motion to Strike Dismissed
16 as Moot

17 Because the Court's rulings on the summary judgment motions in this case are dispositive
18 and foreclose further discovery in this matter, Plaintiff's Appeal of the Court's October 9, 2018
19 order is denied as moot, as is Plaintiff's Motion for leave to submit supplemental evidence, and
20 Plaintiff's Motion to Strike Experian's Reply in Support of its Motion for Summary Judgment.
21 ECF Nos. 89, 119, 125.

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23 **V. CONCLUSION**

24 **IT IS THEREFORE ORDERED** that Plaintiff's Motion for Summary Judgment (ECF
25 No. 90) is GRANTED in part and DENIED in part.

26 **IT IS FURTHER ORDERED** Defendant's Motion for Summary Judgment (ECF No. 98)
27 is GRANTED in part and DENIED in part.

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IT IS FURTHER ORDERED that Plaintiff's Motion for Class Certification (ECF No. 94) is DENIED.

IT IS FURTHER ORDERED that Plaintiff and Defendant's Motions to Seal (ECF Nos. 92, 96, 100, 103, 114, 117) are GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Appeal of the October 8, 2019 order (ECF No. 89) is DENIED as moot.

IT IS FURTHER ORDERED that Plaintiff's Motions for Leave to Submit Supplement Evidence (ECF No. 125) and Motion to Strike (ECF No. 119) are DENIED as moot.

DATED: September 26, 2019.



RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE