

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MARK ELKINS,	)	
	)	
Plaintiff,	)	
	)	No. 06 C 0823
v.	)	
	)	Judge Robert W. Gettleman
OCWEN FEDERAL SAVINGS BANK,	)	
EXPERIAN INFORMATION SOLUTIONS, INC.,	)	
and EQUIFAX, INC.,	)	
	)	
Defendants.	)	

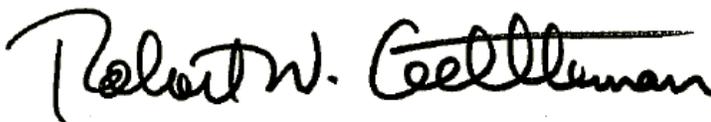
**ORDER**

This matter comes before the court on two objections to rulings by Magistrate Judge Keys. The first is the plaintiff's objection to the magistrate judge's order striking the plaintiff's expert report as hearsay, including the denial by the magistrate judge of the plaintiff's motion to reconsider his initial ruling. The court sustains the objection because, as plaintiff point out, the expert report submitted by plaintiff's expert, Richard F. LeFebvre, was in the form of an affidavit and was the subject of deposition taken by defendants in this case. Unfortunately, Mr. LeFebvre died after his deposition was taken. Accordingly, under Fed. R. Civ. P. 32 and 56, both the report and the deposition may be used both at the summary judgment and ultimate trial phases of this case. Such use, of course, would be subject to the admissibility of the materials contained in the report/affidavit and deposition testimony. Prior to Mr. LeFebvre's untimely death, his report and potential testimony had been challenged under Fed. R. Evid. 702 and Daubert v. Merrell Dow Pharmaceutical, 509 U.S. 579, 592 (1993). As a result of Mr. LeFebvre's death, the magistrate judge considered that motion to be moot and entered the orders that plaintiff now challenges. For the reasons stated above, the motion was not moot.

Accordingly, the court sustains the objections and directs the magistrate judge to consider the motion filed by defendants attacking the expert report and deposition under Daubert and Fed R. Evid.702.

Second, defendant Ocwen has objected to the magistrate judge's order of May 3, 2007, granting plaintiff's motion to compel discovery of documents relating to Ocwen's failure to properly respond to customers' letters including "qualified written requests." The court has granted summary judgment to defendant on this claim. In addition, the information is sought on behalf of a RESPA pattern and practice claim under 12 U.S.C. § 2605(f), which provides for damages in an amount not to exceed \$1,000. In an abundance of caution, Ocwen has provided plaintiff with a Fed. R. Civ. P. 68 offer of judgment of \$1,000 on this claim. In light of the court's ruling and the offer of judgment, plaintiff has prevailed on the pattern and practice claim and consequently any request for discovery on the issue is moot. Accordingly the court sustains defendants' objection.

**ENTER:      June 26, 2007**

A handwritten signature in black ink that reads "Robert W. Gettleman". The signature is written in a cursive, slightly slanted style.

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**Robert W. Gettleman**  
**United States District Judge**