

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS  
AT KANSAS CITY**

**THOMAS J. PAYSON, LETY M. RAMIREZ, )  
CHANNA CLEMENS, JIM SCHMIDT, and )  
STEPHANIE SMITH, On Behalf of Themselves )  
and All Others Similarly Situated, )**

**Plaintiffs,**

**v.**

**CAPITAL ONE HOME LOANS, LLC,**

**Defendant.**

**Case No.: 07-CV-2282-JTM/DWB**

**STIPULATION AND ORDER  
REGARDING PRESERVATION OF DOCUMENTS**

Pursuant to Rules 16, 26, and 29 of the Federal Rules of Civil Procedure, the parties hereby stipulate and agree as follows:

1. For purposes of this Stipulation and Order, the following definitions shall apply:
  - a. “Documents” shall mean any writing, drawings, graphs, photographs, phonorecords, e-mails, and other data compilations from which information can be obtained, including electronic data. This definition is intended to encompass the same scope of documents as Rule 34 of the Federal Rules of Civil Procedure. Documents shall not include, however, the Lead Manager system, the Mortgageware system, surveillance tapes, voice mail recordings, or customer call recordings that are not normally preserved in the ordinary course of business or for time periods beyond which they are normally preserved in the ordinary course of business.
  - b. “Plaintiffs” shall mean Thomas J. Payson, Lety M. Ramirez, Channa Clemens, Jim Schmidt, and Stephanie Smith.
  - c. “Defendant” shall mean Capital One Home Loans, LLC (“COHL”).

d. “Loan Consultant” shall mean employees of Defendant with the job title of Loan Consultant or Loan Officer from June 29, 2004 to the present.

e. “Loan Processor” shall mean employees of Defendant with the job title of Loan Processor, Jr. Loan Processor, and Senior Loan Processor from June 29, 2004 to the present.

f. “Loan Closer” shall mean employees of Defendant with the job title of Loan Closer from June 29, 2004 to the present.

2. Plaintiffs and Defendant agree that, during the pendency of this litigation, they each shall take all reasonably necessary steps to preserve all documents relevant to the subject matter of this litigation. To facilitate compliance with this preservation effort, the parties agree that Defendant shall take all steps reasonably necessary to retain the following categories of documents to the extent that they exist as of the date the parties execute this Stipulation and Order:

a. All computerized payroll, compensation, and personnel databases with any of the following categories information about the Loan Consultants, Loan Processors, or Loan Closers: commission or bonus calculations; overtime payment; hours worked; overtime hours worked; compensation earned; deductions from compensation, including from commissions or bonuses; and job duties.

b. All personnel files of all Loan Consultants, Loan Processors, or Loan Closers.

c. All centrally-maintained training materials relating to Loan Consultants’, Loan Processors’, or Loan Closers’ job duties, but not including copies of the training manuals of individual Loan Consultants, Loan Processors, or Loan Closers in those persons’ possession.

d. All documents explaining the calculation of commissions or bonuses for

Loan Consultants, Loan Processors, or Loan Closers.

e. All manuals, guidelines, handbooks, or policy documents about Defendant's employment practices or policies since June 2004, to the extent they still exist.

3. Plaintiffs and Defendant met and conferred on an agreed list of key words listed in Exhibit A (the "Key Word List") that will be used for retention, review, and production of responsive documents from Defendant's e-mail system for the custodians listed on Exhibit B (the "Preservation Group"). The parties agree that Defendant's use of that final list for preservation, review, and production of Defendant's e-mail for the Preservation Group shall constitute full compliance with Defendant's discovery obligations and this Stipulation and Order; provided, however, that Defendant shall restrict the initial review and production to the Preservation Group designated on Exhibit B with an asterisk. The parties understand and agree that: (i) the initial collection of the e-mail of the Preservation Group shall be accomplished by Defendant's IT personnel using Microsoft ExMerge; (ii) from the date of this initial collection until such time as the parties agree or the Court orders that this retention protocol change, Defendant shall preserve e-mail of the Preservation Group by extracting the Preservation Group's email on a weekly basis using Microsoft ExMerge and storing these e-mails in a separate PST file located in a directory of the Defendant's exchange server; (iii) future review and production of the e-mail preserved pursuant to Paragraph 3(ii) shall be as mutually agreed by the parties or as ordered by the Court; and (iv) other than the preservation, review, and production obligations specified in this paragraph, which the parties expressly agree fully satisfy Defendant's discovery obligations with respect to e-mail, Defendant may resume its normal business practices with respect to retaining e-mail, including automatic deletion of e-mail every 15 months and rotation and overwriting of back-up tapes on a monthly basis.

4. Defendant agrees to take all steps reasonably necessary to notify all appropriate

personnel of the obligations of this Stipulation and Order, including the following: (i) COHL Officers; (ii) Senior Loan Officers or Managers; (iii) Senior Director, HR Consulting; (iv) Director, HR Consulting; (v) VP, Financial; (vi) Senior Manager, Financial Analyst; and (vii) IT Manager. Such notification shall occur within seven (7) days of the agreement to this Stipulation and Order, and again no less often than every six (6) months during the pendency of this litigation. The parties agree that the following constitutes the taking of all steps reasonably necessary to provide the notice required by this paragraph: sending a hard copy of a memorandum setting out the retention obligations in this Stipulation and Order to the personnel listed in this Paragraph 4, and taking reasonably practicable steps to incorporate the obligations of this Stipulation and Order in training and orientation programs for new members of management who would have document retention obligations under this Stipulation and Order. The personnel identified in this Paragraph 4 shall be instructed to inform other appropriate personnel of the obligations of this Stipulation and Order. Defendant shall also suspend its current written document retention requirements to the extent those requirements are inconsistent with this Stipulation and Order.

5. Nothing in this Stipulation and Order shall be considered in determining the proper scope of discovery in this litigation, and the parties expressly acknowledge that their agreement to this Stipulation and Order shall not be considered to be an agreement that the delineated categories of documents are properly discoverable nor to be a waiver of any objection to any request for discovery of or relating to the categories of documents delineated in this Stipulation and Order.

6. Nothing in this Stipulation and Order shall be construed as an admission that any of the delineated categories of documents are currently in existence or that failure to retain said documents prior to the entry of the Stipulation and Order was in any way improper or inappropriate. Nothing in this Stipulation and Order shall be considered to relieve Defendant from any obligation to preserve records imposed by law prior to the entry of this Stipulation and Order.

7. The parties agree that, prior to seeking any involvement of or relief from the Court, their counsel will meet and confer in the event one of them seeks any modification of this Stipulation and Order, or to attempt to resolve any questions or concerns that arise relating to this Stipulation and Order, including any question concerning what documents are outside the scope of this Stipulation and Order. If counsel are unable to resolve their questions or concerns, any party may seek clarification of or relief from this Stipulation and Order from the Court.

8. Except as otherwise provided by law, the parties acknowledge and agree that any documents outside the scope of this Stipulation and Order may be handled in accordance with the usual document retention practices of Defendant.

PURSUANT TO STIPULATION, IT IS SO ORDERED:

Dated: December 19, 2007

s/ DONALD W. BOSTWICK  
Donald W. Bostwick  
U.S. Magistrate Judge

Respectfully submitted,

**The Law Office of Michael Brady**

/s/ Michael F. Brady

Michael F. Brady, KS#18630  
Michael A. Hodgson, KS #21331  
10901 Lowell Avenue, Suite 280  
Overland Park, KS 66210  
Tel: (913) 696-0925  
Fax: (913) 696-0468  
brady@mbradylaw.com  
mhodgson@mbradylaw.com



/s/ Brendan J. Donelon

Brendan J. Donelon, KS #17420  
802 Broadway, 7<sup>th</sup> Floor  
Kansas City, Missouri 64105  
Tel: (816) 221-7100  
Fax: (816) 472-6805  
brendan@donelonpc.com

**ATTORNEYS FOR PLAINTIFFS**

-and-

/s/ Steven T. Catlett

Steven T. Catlett, IL #6269229  
Giselle M. Perez, IL #6283732  
**Paul, Hastings, Janofsky & Walker LLP**  
191 N. Wacker Drive, 30<sup>th</sup> Floor  
Chicago, IL 60606  
Tel: (312) 499-6000  
Fax: (312) 499-6100  
stevencatlett@paulhastings.com  
giselleperez@paulhastings.com

/s/ Jennifer C. Webb

Brian J. Finucane, KS #70154  
Jennifer C. Webb, KS #19855  
**Fisher & Phillips LLP**  
The Stilwell Building, Suite 400  
104 W. 9<sup>th</sup> Street  
Kansas City, MO 64105  
Tel: (816) 460-0201  
Fax: (816) 842-8767  
bfinucane@laborlawyers.com  
jwebb@laborlawyers.com

**ATTORNEYS FOR DEFENDANT, CAPITAL ONE HOME LOANS, LLC**

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 18th day of December, 2007, I electronically filed the foregoing **Stipulation and Order Regarding Preservation of Documents** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following attorneys for Plaintiffs at their e-mail addresses on file with the Court:

Brendan J. Donelon (KS #17420)  
Donelon, P.C.  
802 Broadway, 7th Floor  
Kansas City, Missouri 64105  
Tel: (816) 221-7100  
Fax: (816) 472-6805  
E-Mail: [brendan@donelonpc.com](mailto:brendan@donelonpc.com)

Michael F. Brady (KS #18630)  
The Law Offices of Michael F. Brady  
10901 Lowell Avenue, Suite 280  
Overland Park, Kansas 66210  
Tel: (913) 696-0925  
Fax: (913) 696-0468  
E-Mail: [brady@mbradylaw.com](mailto:brady@mbradylaw.com)

Michael A. Hodgson (KS #21331)  
The Law Offices of Michael F. Brady  
10901 Lowell Avenue, Suite 280  
Overland Park, Kansas 66210  
Tel: (913) 696-0925  
Fax: (913) 696-0468  
E-Mail: [mhodgson@mbradylaw.com](mailto:mhodgson@mbradylaw.com)

/s/ Jennifer C. Webb

One of the Attorneys for Defendant  
CAPITAL ONE HOME LOANS, LLC

## **EXHIBIT A**



## KEY WORD LIST

1. Overtime
2. OT
3. FLSA
4. Fair Labor Standards Act
5. Audit
6. Lawsuit
7. Exempt
8. Non-exempt
9. Draw
10. Esmart Loan
11. Payson
12. Ramirez
13. Schmidt
14. Clemens
15. Hits
16. Manager's Pool
17. MP

## **EXHIBIT B**

## **PRESERVATION GROUP**

1. Sean Dunn
2. Lance Melber \*
3. Greg Owens \*
4. Nancy Hofstetter
5. Trina Flynn \*
6. Jay Listisen \*
7. Vicki Ronnebaum \*
8. Scott Speers
9. John Bohde
10. Chad Cronk
11. John Glenn
12. Kevin Lassard
13. William Male
14. John McKim
15. Joshua Zacharias
16. Sunanda Desai\*