

1 Matthew C. Helland, CA Bar No. 250451  
 2 Jodi L. Collova, CA Bar No. 261505  
 3 NICHOLS KASTER, LLP  
 4 One Embarcadero Center, Ste. 720  
 5 San Francisco, CA 94111  
 Telephone: (415) 277-7235  
 Facsimile: (415) 277-7238  
 Email: helland@nka.com,  
 collova@nka.com

6 ATTORNEYS FOR PLAINTIFFS

7 JoAnna L. Brooks, CA Bar No. 182986  
 8 Anne V. Leinfelder, CA No. 230272  
 JACKSON LEWIS LLP  
 9 199 Fremont Street, 10th Floor  
 San Francisco, CA 94105  
 Telephone: (415) 394-9400  
 10 Facsimile: (415) 394-9401

11 ATTORNEYS FOR DEFENDANT  
 12 Capital One Financial Corp.

13 Additional Counsel Listed on Following Page

14 **UNITED STATES DISTRICT COURT**  
 15 **NORTHERN DISTRICT COURT OF CALIFORNIA**

16 Angela Shepard, Carol Rhea, Jackie Sears,  
 17 Cynthia Hushaw, Evaristo Bungcayao,  
 18 Rebecca Molina, Monica Dominguez, and  
 Shirley Young,

Case No. CV 09 5722 PJH

19 Plaintiffs,

**STIPULATION AND [PROPOSED]  
 ORDER RE FILING AMENDING  
 COMPLAINT**

20 v.

21 COMSYS Information Technology  
 22 Services, Inc.; COMSYS Services LLC;  
 Capital One Financial Corp., and DOES  
 23 1-50, inclusive,

24 Defendants.

25  
 26  
 27  
 28

1 Stuart W. Miller, CA State Bar No. 127766  
2 John C. Post, CA State Bar No. 233236  
3 DAVIS WRIGHT TREMAINE LLP  
4 505 Montgomery Street, Suite 800  
5 San Francisco, California 94111  
6 Telephone: (415) 276-6500  
7 Facsimile: (415) 276-6599  
8 Email: stuartmiller@dwt.com

9 ATTORNEYS FOR DEFENDANTS  
10 COMSYS Information Technology Services, Inc.  
11 and COMSYS Services LLC  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Plaintiffs Angela Shepard, Carol Rhea, Jackie Sears, Cynthia Hushaw, Evaristo  
2 Bungcayao, Rebecca Molina, Monica Dominguez, and Shirley Young (“Plaintiffs”) – and  
3 Defendants COMSYS Information Technology Services, Inc., COMSYS Services LLC, Capital  
4 One Financial Corp., (collectively “the parties”) – by and through their attorneys, HEREBY  
5 STIPULATE AND AGREE as follows:

6 Pursuant to Rule 15(a)(2), Plaintiffs shall have leave to file their First Amended  
7 Complaint, attached hereto as Exhibit A. Defendant Capital One Financial Corp. does not  
8 concede it is a proper party defendant. By stipulating to add GreenPoint Mortgage Funding, Inc.  
9 to the First Amended Complaint, Defendant Capital One Financial Corp. does not concede it or  
10 GreenPoint Mortgage Funding, Inc. is liable in any way for the allegations contained in the First  
11 Amended Complaint.

12 Dated:

NICHOLS KASTER, LLP

13 By: s/Matthew C. Helland  
14 Matthew C. Helland  
ATTORNEYS FOR PLAINTIFFS

15 JACKSON LEWIS LLP

16 By: s/JoAnna L. Brooks  
17 JoAnna L. Brooks  
ATTORNEYS FOR DEFENDANT CAPITAL ONE  
18 FINANCIAL CORP.

19 DAVIS WRIGHT TREMAINE LLP

20 By: s/Stuart W. Miller  
21 Stuart W. Miller  
ATTORNEYS FOR DEFENDANTS COMSYS  
22 INFORMATION TECHNOLOGY SERVICES,  
INC. and COMSYS SERVICES LLC

23 **[PROPOSED] ORDER**

24 PURSUANT TO STIPULATION, IT IS SO ORDERED.

25 Dated: 6/1/10

26  
27 Honorable Phyllis J. Hamilton  
28 United States District Court Judge



# Exhibit A

1 Matthew C. Helland, CA Bar No. 250451  
helland@nka.com  
2 Jodi L. Collova, CA Bar No. 261505  
collova@nka.com  
3 NICHOLS KASTER, LLP  
One Embarcadero Center, Ste. 720  
4 San Francisco, CA 94111  
Telephone: 415-277-7235  
5 Facsimile: 415-277-7238

6 ATTORNEYS FOR PLAINTIFFS

7  
8  
9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT COURT OF CALIFORNIA**

11 Angela Shepard, Carol Rhea, Jackie Sears,  
12 Cynthia Hushaw, Evaristo Bungcayao,  
13 Rebecca Molina, Monica Dominguez, and  
Shirley Young,

14 Plaintiffs,

15 v.

16 COMSYS Information Technology  
Services, Inc.; COMSYS Services LLC;  
17 Capital One Financial Corp., GreenPoint  
Mortgage Funding Inc. and DOES 1-50,  
18 inclusive,

19 Defendants.

Case No. CV 09 5722 PJH

**FIRST AMENDED COMPLAINT FOR  
DAMAGES AND RESTITUTION**

**(1) Violation of Fair Labor Standards Act,  
29 U.S.C. Section 201 *et seq.*;**

**(2) Violation of Cal. Wage Order No. 4;  
Cal. Labor Code § 510, 1194, 1198;**

**(3) Violation of Cal. Labor Code § 201, 202  
& 203;**

**(4) Failure to Provide Meal and/or Rest  
Periods;**

**(5) Violation of California Unfair  
Competition Law, Cal. Bus. & Prof. code §  
17200 *et seq.***

**DEMAND FOR JURY TRIAL**

1 **PRELIMINARY STATEMENT**

2 1. Defendants COMSYS Information Technology Services, Inc., COMSYS Services  
3 LLC, GreenPoint Mortgage Funding Inc., and Capital One Financial Corp. (collectively  
4 “Defendants”), jointly employed Plaintiffs Angela Shepard, Carol Rhea, Jackie Sears, Cynthia  
5 Hushaw, Evaristo Bungcayao, Rebecca Molina, Monica Dominguez, and Shirley Young  
6 (collectively “Plaintiffs”) to work at Defendant Capital One Financial Corp.’s/ Defendant  
7 GreenPoint Mortgage Funding Inc.’s facility in Santa Rosa, California, from approximately  
8 December 2006 to April 2007. Defendant Capital One Financial Corporation acquired North  
9 Fork Bank in 2006, and in doing so, acquired North Fork Bank’s subsidiaries and affiliates,  
10 including Defendant GreenPoint Mortgage Funding Inc.

11 2. During their employment, Plaintiffs were covered, non-exempt employees under  
12 Fair Labor Standards Act (“FLSA”) and California laws and are entitled to overtime pay  
13 consistent with the requirements of these laws. Defendants failed to pay appropriate overtime  
14 compensation and/or provide meal and/or rest breaks to each Plaintiff as required by state and  
15 federal law. Plaintiffs seek relief under the FLSA and California laws, to remedy Defendants’  
16 failure to pay all wages due, pay appropriate overtime compensation, pay meal and rest break  
17 premiums, and failure to pay wages due in accordance with applicable time limits.

18 **THE PARTIES**

19 3. Plaintiff Angela Shepard resides in Lodi, California.

20 4. Plaintiffs Evaristo Bungcayao and Shirley Young reside in Manteca, California.

21 5. Plaintiffs Carol Rhea, Jackie Sears, Cindy Hushaw, Rebecca Molina, and Monica  
22 Dominguez, reside in Stockton, California.

23 6. Upon information and belief, Defendant COMSYS Information Technology  
24 Services, Inc. (“COMSYS IT”) is a foreign corporation headquartered in Texas. Upon  
25 information and belief, Defendant COMSYS Services LLC (“COMSYS Services”), is a wholly-  
26 owned subsidiary of Defendant COMSYS Information Technology Services, Inc. COMSYS IT  
27 and COMSYS Services (together “COMSYS Defendants”) provide staffing services for  
28 companies in several states throughout the United States, including in Marin County, California.



1 California state law claims under 28 U.S.C. § 1367, inasmuch those claims derive from the same  
2 nucleus of operative facts as the Plaintiffs' FLSA claims.

3 12. Venue is proper in the United States District Court, Northern District Court of  
4 California, pursuant to 28 U.S.C. § 1391, because, during all relevant times, Defendants  
5 conducted business in Marin County, California and employed Plaintiffs in Marin County,  
6 California, and because a substantial part of the events giving rise to the claims occurred in this  
7 district.

8 **FACTUAL ALLEGATIONS**

9 13. Defendant Capital One acquired North Fork Bank in 2006.

10 14. In acquiring North Fork Bank, Defendant Capital One acquired all of North Fork  
11 Bank's subsidiaries and affiliates, including GreenPoint.

12 15. During all relevant times, Defendant Capital One and Defendant GreenPoint  
13 operated a mortgage loan business under the GreenPoint name.

14 16. The COMSYS Defendants provide staffing services to various companies.

15 17. The COMSYS Defendants hired Plaintiffs to work on a temporary basis at Capital  
16 One's GreenPoint facility in Santa Rosa, California.

17 18. Plaintiffs worked at Capital One's GreenPoint facility in Santa Rosa, California,  
18 from approximately December 6, 2006 to April 6, 2007.

19 19. Plaintiffs' main job responsibility was to audit mortgage loans, which involved  
20 verifying documentation and obtaining documentation.

21 20. Upon information and belief, Plaintiffs primary job duties involved Capital One/  
22 Greenpoint's loan files.

23 21. Upon information and belief, Capital One and GreenPoint determined Plaintiffs'  
24 job duties.

25 22. Plaintiffs communicated with Capital One/ Greenpoint personnel regarding issues  
26 pertaining to loan files.

27 23. Capital One/ GreenPoint provided one or more Plaintiffs with financial goals  
28 sheets that listed the financial goals for both GreenPoint and Capital One.









1 time is less than three and one-half hours. Authorized rest period  
2 time shall be counted, as hours worked, for which there shall be no  
3 deduction from wages

4 (B) If an employer fails to provide an employee a rest period in  
5 accordance with the applicable provisions of this Order, the  
6 employer shall pay the employee one hour of pay at the employee's  
7 regular rate of compensation for each work day that the rest period  
8 is not provided.

9 60. Cal. Labor Code § 226.7 prohibits any employer from requiring any employee to  
10 work during any meal or rest period mandated by an applicable IWC wage order, and provides  
11 that an employer that fails to provide an employee with a required rest break or meal period shall  
12 pay that employee one additional hour of pay at the employee's regular rate of compensation for  
13 each work day that the employer does not provide a compliant meal or rest period.

14 61. Defendants failed to provide Plaintiffs with meal periods as required by law, and  
15 failed to authorize and permit the Plaintiffs to take rest periods as required by law. Plaintiffs are  
16 therefore entitled to payment of the meal and rest period premiums as provided by law, but were  
17 not paid these premiums by Defendants.

18 **FIFTH CLAIM FOR RELIEF**

19 **(California Unfair Competition Law, Cal. Bus. & Prof. Code §17200 et seq.)**

20 62. Plaintiffs allege and incorporate by reference the allegations in the preceding  
21 paragraphs.

22 63. The foregoing conduct, as alleged, violates the California Unfair Competition Law  
23 ("UCL"), Cal. Bus. & Prof. Code § 17200 *et seq.* Section 17200 of the Cal. Bus. & Prof. Code  
24 prohibits unfair competition by prohibiting, *inter alia*, any unlawful or unfair business acts or  
25 practices.

26 64. Beginning at a date unknown to Plaintiffs, Defendants committed, and continue to  
27 commit, acts of unfair competition, as defined by the UCL, by, among other things, engaging in  
28 the acts and practices described herein. Defendants' conduct as herein alleged has injured the  
Plaintiffs by wrongfully denying them earned wages, and therefore was substantially injurious to  
Plaintiffs.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

E. That Defendants be ordered and enjoined to pay restitution to Plaintiffs due to Defendant's unlawful activities, pursuant to California Business and Professions Code sections 17200, et seq.;

F. An award to Plaintiffs for the amount of unpaid wages owed, including liquidated damages and/or interest thereon, and penalties subject to proof at trial; and

G. For such other and further relief, in law or equity, available under the laws cited in this Complaint and as this Court may deem appropriate and just.

**DEMAND FOR JURY TRIAL**

69. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury.

Dated: NICHOLS KASTER, LLP

By: \_\_\_\_\_  
Matthew C. Helland  
ATTORNEYS FOR PLAINTIFFS