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8	IN THE UNITED STATES DISTRICT COURT	
9	FOR THE DISTRICT OF ARIZONA	
10		
11	Christine Baker,	NO. CV04-1192-PCT-NVW
12	Plaintiff,	DEFENDANT CAPITAL ONE BANK'S REPLY IN SUPPORT
13	VS.	OF ITS OBJECTION TO PORTIONS OF PLAINTIFF'S
14	Capital One Bank; Capital One, F.S.B.; Capit One Services, Inc.; Equifax Credit Information	tal AFFIDAVIT
15	Services; Retailers National Bank; Amerique Mortgage Company; Panda Management, Inc Anthony Ferlanti; Does 1-10,	st (Assigned to Hon. Neil V. Wake)
16	Defendants.	
17		
18	Defendant Capital One Bank "Capital One" hereby replies in support of its	
19	Objection to Portions of Plaintiff's Affidavit. Capital One's Objections are supported by	
20	the following Memorandum of Points and Authorities.	
21	DATED this 10th day of July, 2006.	
22	QUARLES & BRADY STREICH LANG LLP Renaissance One Two North Central Avenue Phoenix, AZ 85004-2391	
23		
24	By s/Kathleen A. Biesterveld	
25	Kevin D. Quigley	
26	Kathleen A. Biesterveld Attornava for Defendant Capital One Bank	
27	Attorneys for Defendant Capital One Bank	
28		

MEMORANDUM OF POINTS AND AUTHORITIES

As set forth in Capital One's Objection to Portions of Plaintiff's Affidavit ("Objection"), pursuant to Fed. R. Civ. P. 56(e), Ms. Baker lacks sufficient personal knowledge or foundation to testify as to the meaning of Experian's documents or as to the matters stated in paragraphs 5 through 12. Further, the testimony set forth in paragraphs 17 through 19, 21 and 24 is vague, ambiguous, and purely conjectural. Those portions of Ms. Baker's rebuttal affidavit should therefore not be considered by this Court in ruling on Capital One's Motion for Summary Judgment.

In an attempt solve her personal knowledge and foundational deficiencies, Ms. Baker responds to Capital One's Objection by baldly declaring herself an expert in this matter. However, nothing set forth in either her affidavit or in her Response supports a finding that Ms. Baker satisfies the requirements of Fed. R. Evid. 702. Specifically, Ms. Baker has no personal knowledge and is not competent to testify as to the meaning of Experian's business records. [See Affidavit ¶¶ 5-9]. Ms. Baker is not a former employee of Experian and has no experience drafting such reports. Nor has she asserted any specialized knowledge or experience with Experian's documents. Ms. Baker has submitted no competent foundational basis for disputing the Declaration of Kimberly Hughes, an Experian specialist in this area. [See Exhibit 3 to Defendant's Statement of Facts in Support of its Motion for Summary Judgment].

Moreover, Ms. Baker's Response does not supply <u>any</u> foundation for her testimony related to "most users of credit reports" and her "readers and clients". [See Affidavit ¶¶ 10-12, 17-18]. Again, these statements are speculations and conjectural.

Additionally, Ms. Baker did not identify herself, or anyone else, as an Expert in her disclosure statement in this matter. Ms. Baker has wholly failed to comply with Fed. R. Civ. P. 26(a)(2). [See Plaintiff Christine Baker's Initial Disclosure Statement at pg. 8, attached hereto as Exhibit "A"]. Ms. Baker has not disclosed any expert reports or any other documents or information necessary to comply with Rule 26(a)(2)(B). Further, pursuant to this Court's Case Management Order, the deadline for Ms. Baker to provide

full and complete expert disclosures passed on December 30, 2005, more than six months ago. Ms. Baker's Affidavit should be struck for the additional reason that she failed to comply with the disclosure requirements set forth in Rule 26.

Finally, even if Ms. Baker were an expert and had properly disclosed herself as such in this case, the matters set forth in paragraphs 5 through 12, 17 through 19, 21 and 24 are not a proper use of expert testimony. Ms. Baker does not provide any reliable basis for her "opinions" in paragraphs 5 through 9. Rather, the testimony in those paragraphs are bald conclusions which she lacks foundation or personal knowledge to reach.

For the foregoing reasons, Capital One requests that the Court not consider paragraphs 5 through 12, 17 through 19, 21 and 24 in deciding Capital One's Motion for Summary Judgment.

DATED this 10th day of July, 2006.

QUARLES & BRADY STREICH LANG LLP Renaissance One Two North Central Avenue Phoenix, AZ 85004-2391

By s/Kathleen A. Biesterveld
Kevin D. Quigley
Kathleen A. Biesterveld

Attorneys for Defendant Capital One Bank

1	CERTIFICATE OF SERVICE	
2		
3	I hereby certify that on July 10, 2006, I electronically transmitted the attached	
4	document to the Clerk's Office using the CM/ECF System for filing and transmittal of a	
5	Notice of Electronic Filing to the following CM/ECF registrants:	
6	Christine Baker christine@bayhouse.com christine@creditsuit.org,christine@emailservice.com	
7		
8	Rodrick Joseph Coffey rcoffey@stinsonmoheck.com Jennifer Hadley Dioguardi jdioguardi@swlaw.com docket@swlaw.com;escott@swlaw.com	
9		
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11	Jeffrey Messing messing@poliball.com docket@poliball.com Heidi McNeil Staudenmaier hstaudenmaier@swlaw.com vcorral@swlaw.com,docket@swlaw.com	
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14		
15	s/ Kathleen A. Biesterveld	
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