

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

ROBERT H. BRAVER, an individual,

Plaintiff,

v.

AMERIQUEST MORTGAGE  
COMPANY, a Delaware corporation,  
INNOVATIVE MARKETING, INC.,  
d/b/a/ LEAD EXTREME, a Washington  
corporation, THE LOAN PAGE, INC., a  
Delaware corporation, GO APPLY, INC.,  
d/b/a ELEADZ, a Nevada corporation,  
JOHN DOES 1-50,

Defendants.

CASE NO. CIV-04-1013-W

AMERIQUEST MORTGAGE  
COMPANY, a Delaware corporation,

Cross-Complainant,

v.

INNOVATIVE MARKETING, INC. d/b/a  
LEAD EXTREME, a Washington  
corporation, and PROFESSIONAL  
EQUITY MARKETING, a California  
corporation, and ROES 1-50, inclusive,

Cross-Defendants.

**AMERIQUEST MORTGAGE COMPANY'S AMENDED CROSS-COMPLAINT**  
**FOR DECLARATORY RELIEF FOR INDEMNITY**

Defendant and Cross-Complainant Ameriquest Mortgage Company hereby complains and alleges as follows:

**PARTIES**

1. Defendant and Cross-Complainant Ameriquest Mortgage Company ("Ameriquest") is a corporation organized under the laws of the state of Delaware, with its

principal place of business in California.

2. Ameriquest is informed and believes, and based thereon alleges, that Cross-Defendant Innovative Marketing, Inc. d/b/a Lead Extreme (“Lead Extreme”) is, and at all times relevant herein was, a Washington corporation with its principal place of business in Washington.

3. Ameriquest is informed and believes, and based thereon alleges, that Cross-Defendant Professional Equity Marketing (“PEM”) is, and at all times relevant herein was, a Florida corporation with its principal place of business in Florida.

4. Ameriquest is informed and believes, and based thereon alleges, that Plaintiff Robert H. Braver is, and at all times relevant herein was, a resident of the State of Oklahoma.

5. Ameriquest does not know the names of Cross-Defendants sued herein as ROES 1 through 50, inclusive, and therefore sues these Cross-Defendants by such fictitious names.

Ameriquest will amend this Cross-Complaint to allege their true names and/or legal capacities when the same are ascertained. Ameriquest alleges, on information and belief, that each of these fictitiously named Cross-Defendants is responsible for the occurrences herein alleged.

Collectively, Lead Extreme and PEM, and Roes 1-35, inclusive shall be referred to herein as “Cross-Defendants.”

6. Ameriquest is informed and believes, and based thereon alleges, that at all times relevant herein, each of the Cross-Defendants was the agent, representative, employee, co-conspirator and/or servant of each of the remaining Cross-Defendants and was acting within the course and scope of that agency, representation, employment or service in doing and/or failing to do the acts herein alleged.

### **JURISDICTION**

7. This Court has supplemental jurisdiction over this Cross-Complaint under 28 U.S.C. Section 1367. The claims in this Cross-Complaint are so related to the claims asserted in

the main action that they form part of the same case or controversy under Article III of the United States Constitution.

**GENERAL ALLEGATIONS**

8. On or about January 28, 2002, Ameriquest entered into a “Lead Purchase Agreement” with Lead Extreme whereby Lead Extreme agreed to generate and provide consumer leads for Ameriquest (“Lead Extreme Agreement”). Under paragraph 5.3 of the Lead Extreme Agreement, Lead Extreme agreed to comply with any and all applicable federal, state, and local laws in the performance of its obligations under the Lead Extreme Agreement.

9. Pursuant to the Lead Extreme Agreement, Lead Extreme agreed to defend and indemnify Ameriquest from and against any and all claims, losses, damages, and attorney’s fees and expenses arising out of Lead Extreme’s breach of the Lead Extreme Agreement.

10. On or about August 25, 2003, Ameriquest entered into a “Lead Purchase Agreement” with PEM whereby PEM agreed to generate and provide consumer leads for Ameriquest (“PEM Agreement”). Under the PEM Agreement, PEM agreed to comply with any and all applicable laws and regulations in the performance of its obligations under the PEM Agreement.

11. Pursuant to the PEM Agreement, PEM agreed to defend and indemnify Ameriquest from and against any and all claims, losses, damages, and attorney’s fees and expenses arising out of PEM’s breach of the PEM Agreement.

12. Ameriquest denies that there is any liability for any of the acts and/or omissions alleged in the Amended Complaint.

13. Ameriquest has demanded that the Cross-Defendants defend and indemnify Ameriquest in this action. Cross-Defendants refuse to do so.

14. Ameriquest is informed and believes, and based thereon alleges, that Cross-

Defendants sent one or more of the e-mails which are the subject of Plaintiff's Amended Complaint.

**FIRST CAUSE OF ACTION**

**(Declaratory Relief for Indemnity)**

(Against All Cross-Defendants)

15. Ameriquest realleges and incorporates by this reference paragraphs 1 through 14, inclusive, of this Cross-Complaint, as though set forth in full herein.

16. An actual controversy has arisen and now exists between Ameriquest and Cross-Defendants in that Ameriquest contends and Cross-Defendants deny the following:

a) As between Ameriquest, on the one hand, and Cross-Defendants, on the other hand, responsibility, if any, for the damages claimed by Plaintiff in this action rests entirely or partially on Cross-Defendants; and

b) That, as a result, Cross-Defendants are obligated, partially or fully, to indemnify Ameriquest for any sums which it may be compelled to pay as a result of any damages, judgments or other awards recovered by Plaintiff against Ameriquest in the action and for Ameriquest's legal fees in defending this action.

17. Ameriquest desires a judicial determination of the respective rights and duties of the parties to this action with respect to the damages claimed by Plaintiff in the action. In particular, Ameriquest desires a declaration of the respective liabilities of itself and Cross-Defendants for such damages, if any, and a declaration of Cross-Defendants' responsibility to indemnify Ameriquest for any sums which it may be compelled to pay and for which Cross-Defendants have been determined to be responsible in the action.

18. Such a declaration is necessary and appropriate at this time in order that Ameriquest may ascertain its rights and duties with respect to Plaintiff's claims for damages.

Furthermore, all these claims arise out of the same transactions and the determination of all of them in one proceeding is necessary and appropriate in order to avoid the multiplicity of actions which would result if Ameriquest was required to defend against Plaintiff's claims now and then later bring a separate action against Cross-Defendants for indemnification of funds which Ameriquest might be compelled to pay as a result of any damages, judgments or other awards Plaintiff may recover against it in the action.

**WHEREFORE** Cross-Complainant Ameriquest prays for judgment in its favor and against Cross-Defendants as follows:

1. For a judicial determination of Cross-Defendants' responsibility and liability for the damages claimed by Plaintiff, if any;
2. For a judicial determination of the amount for which Cross-Defendants are obligated to indemnify Ameriquest if it is compelled to pay any sums as the result of any damages, judgments or other awards recovered against it by Plaintiff in this action and for fees incurred by Ameriquest in defending this action;
3. For reasonable attorney's fees;
4. For costs of the suit; and
5. For such other and further relief as the Court may deem just and proper.

DATED: April 28, 2005

By                   /s/ Kalley R. Aman                    
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**CERTIFICATE OF SERVICE**

This is to certify that on this 28<sup>th</sup> day of April, 2005, I electronically transmitted the attached documents to the Clerk of Court using the ECF system for filing the transmittal of a Notice of Electronic Filing to the following registrants:

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