

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**

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**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.**

**DEFENDANT AND CROSS-CLAIMANT AMERIQUEST MORTGAGE COMPANY'S**

**ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant and Cross-Claimant Ameriquest Mortgage Company (“Ameriquest”) hereby answers Plaintiff’s Amended Complaint as follows:

1. Answering Paragraph 1 of the Amended Complaint, Ameriquest denies the allegations contained therein.

2. Answering Paragraph 2 of the Amended Complaint, Ameriquest currently lacks sufficient information or belief to answer the allegations of Paragraph 2 and, on that basis, denies them.

3. Answering Paragraph 3 of the Amended Complaint, Ameriquest currently lacks sufficient information or belief to answer the allegations of Paragraph 3 and, on that basis, denies them.

4. Answering Paragraph 4 of the Amended Complaint, Ameriquest re-alleges and incorporates its responses to Paragraphs 1 through 3 herein, inclusive.

5. Answering Paragraph 5 of the Amended Complaint, Ameriquest currently lacks sufficient information or belief to answer the allegations of Paragraph 5 and, on that basis, denies them.

6. Answering Paragraph 6 of the Amended Complaint, Ameriquest currently lacks sufficient information or belief to answer the allegations of Paragraph 6 and, on that basis, denies them.

7. Answering Paragraph 7 of the Amended Complaint, Ameriquest alleges that it maintains retail branch offices in the State of Oklahoma and makes loans to borrowers in Oklahoma. Except as expressly admitted herein, Ameriquest denies the remaining allegations of Paragraph 7.

8. Answering Paragraph 8 of the Amended Complaint, Ameriquest denies the allegations contained therein.

9. Answering Paragraph 9 of the Amended Complaint, Ameriquest alleges that it maintains retail branch offices in the State of Oklahoma for the purpose of making loans. Except as expressly admitted herein, Ameriquest denies the remaining allegations of Paragraph 9.

10. Answering Paragraph 10 of the Amended Complaint, Ameriquest alleges that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. §1332, and 28 U.S.C. §1441(a), and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. Except as expressly admitted herein, Ameriquest denies the remaining allegations contained in Paragraph 10.

11. Answering Paragraph 11 of the Amended Complaint, Ameriquest currently lacks sufficient information or belief to answer the allegations of Paragraph 11 and, on that basis, denies them.

12. Answering Paragraph 12 of the Amended Complaint, Ameriquest re-alleges and incorporates its responses to Paragraphs 1 through 11 herein, inclusive.

13. Answering Paragraph 13 of the Amended Complaint, Ameriquest currently lacks sufficient information or belief to answer the allegations of Paragraph 13 and, on that basis, denies them.

14. Answering Paragraph 14 of the Amended Complaint, Ameriquest alleges that it is a Delaware corporation with its corporate headquarters and principal place of business in the County of Orange, State of California. Except as expressly admitted herein, Ameriquest denies the allegations of Paragraph 14.

15. Answering Paragraph 15 of the Amended Complaint, Ameriquest currently lacks sufficient information or belief to answer the allegations of Paragraph 15 and, on that basis, denies them.

16. Answering Paragraph 16 of the Amended Complaint, Ameriquest currently lacks sufficient information or belief to answer the allegations of Paragraph 16 and, on that basis, denies them.

17. Answering Paragraph 17 of the Amended Complaint, Ameriquest currently lacks sufficient information or belief to answer the allegations of Paragraph 17 and, on that basis, denies them.

18. Paragraph 18 does not contain any material allegations of fact that Ameriquest is required to admit or deny.

19. Answering Paragraph 19 of the Amended Complaint, Ameriquest denies the allegations contained therein.

20. Answering Paragraph 20 of the Amended Complaint, Ameriquest re-alleges and incorporates its responses to Paragraphs 1 through 19 herein, inclusive.

21. Answering Paragraph 21 of the Amended Complaint, Ameriquest currently lacks sufficient information or belief to answer the allegations of Paragraph 21 and, on that basis, denies them.

22. Answering Paragraph 22 of the Amended Complaint, Ameriquest currently lacks sufficient information or belief to answer the allegations of Paragraph 22 and, on that basis, denies them.

23. Answering Paragraph 23 of the Amended Complaint, Ameriquest re-alleges and incorporates its responses to Paragraphs 1 through 22 herein, inclusive.

24. Answering Paragraph 24 of the Amended Complaint, Ameriquest alleges that its principal place of business is located in the County of Orange, State of California. Except as expressly admitted herein, Ameriquest denies the remaining allegations of Paragraph 24.

25. Answering Paragraph 25 of the Amended Complaint, Ameriquest currently lacks sufficient information or belief to answer the allegations of Paragraph 25 and, on that basis, denies them.

26. Answering Paragraph 26 of the Amended Complaint, Ameriquest currently lacks sufficient information or belief to answer the allegations of Paragraph 26 and, on that basis, denies them.

27. Answering Paragraph 27 of the Amended Complaint, Ameriquest currently lacks sufficient information or belief to answer the allegations of Paragraph 27 and, on that basis, denies them.

28. Answering Paragraph 28 of the Amended Complaint, Ameriquest alleges that it is a mortgage lender. Except as expressly admitted herein, Ameriquest denies the remaining allegations contained in Paragraph 28.

29. Answering Paragraph 29 of the Amended Complaint, Ameriquest re-alleges and incorporates its responses to Paragraphs 1 through 28 herein, inclusive.

30. Answering Paragraph 30 of the Amended Complaint, Ameriquest denies the allegations contained therein.

31. Answering Paragraph 31 of the Amended Complaint, Ameriquest denies the allegations contained therein.

32. Answering Paragraph 32 of the Amended Complaint, Ameriquest denies the allegations contained therein.

33. Answering Paragraph 33 of the Amended Complaint, Ameriquest denies the allegations contained therein.

34. Answering Paragraph 34 of the Amended Complaint, Ameriquest denies the allegations contained therein.

35. Answering Paragraph 35 of the Amended Complaint, Ameriquest re-alleges and incorporates its responses to Paragraphs 1 through 34 herein, inclusive.

36. Answering Paragraph 36 of the Amended Complaint, Ameriquest denies the allegations contained therein.

37. Answering Paragraph 37 of the Amended Complaint, Ameriquest denies the allegations contained therein.

38. Answering Paragraph 38 of the Amended Complaint, Ameriquest denies the allegations contained therein.

39. Answering Paragraph 39 of the Amended Complaint, Ameriquest denies the allegations contained therein.

40. Answering Paragraph 40 of the Amended Complaint, Ameriquest re-alleges and incorporates its responses to Paragraphs 1 through 39 herein, inclusive.

41. Answering Paragraph 41 of the Amended Complaint, Ameriquest denies the allegations contained therein.

42. Answering Paragraph 42 of the Amended Complaint, Ameriquest denies the allegations contained therein.

43. Answering Paragraph 43 of the Amended Complaint, Ameriquest denies the allegations contained therein.

44. Answering Paragraph 44 of the Amended Complaint, Ameriquest re-alleges and incorporates its responses to Paragraphs 1 through 43 herein, inclusive.

45. Answering Paragraph 45 of the Amended Complaint, Ameriquest denies the allegations contained therein.

46. Answering Paragraph 46 of the Amended Complaint, Ameriquest denies the allegations contained therein.

47. Answering Paragraph 47 of the Amended Complaint, Ameriquest denies the allegations contained therein.

48. Answering Paragraph 48 of the Amended Complaint, Ameriquest denies the allegations contained therein.

**AFFIRMATIVE DEFENSES**

**FIRST SEPARATE AND AFFIRMATIVE DEFENSE**

(Failure to State a Claim)

1. For its first separate and affirmative defense, Ameriquest alleges that the Amended Complaint does not state facts sufficient to constitute any claim upon which relief may be granted against Ameriquest.

**SECOND SEPARATE AND AFFIRMATIVE DEFENSE**

(Waiver)

2. For its second separate and affirmative defense, Ameriquest alleges that Plaintiff has waived his rights, if any, to bring this action.

**THIRD SEPARATE AND AFFIRMATIVE DEFENSE**

(Consent)

3. For its third separate and affirmative defense Ameriquest alleges that Plaintiff, by

his knowledge, statements and/or conduct, has consented and/or acquiesced to the alleged acts and/or commissions of Ameriquest described in the Amended Complaint.

**FOURTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Estoppel)

4. For its fourth separate and affirmative defense, Ameriquest alleges that Plaintiff is estopped from asserting the claims raised in the Amended Complaint.

**FIFTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Statute of Limitations)

5. For its fifth separate and affirmative defense, Ameriquest alleges that Plaintiff's claims are barred by any and all applicable federal and state statutes of limitations.

**SIXTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Laches)

6. For its sixth separate and affirmative defense, Ameriquest alleges that Plaintiff is precluded from recovery under the doctrine of laches.

**SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Mistake)

7. For its seventh separate and affirmative defense, Ameriquest alleges that any acts and/or omissions of Ameriquest giving rise to Plaintiff's claims are the result of innocent mistake despite reasonable procedures implemented by Ameriquest.

**EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Plaintiffs' Failure to Exercise Reasonable Care)

8. For its eighth and separate and affirmative defense, Ameriquest alleges that Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to exercise reasonable and

ordinary care, caution and prudence to prevent his alleged injury, if any.

**NINTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Conduct of Plaintiffs/Third Parties)

9. For its ninth and separate and affirmative defense, Ameriquest alleges that Plaintiff's claims are barred, in whole or in part, because Plaintiff's own conduct and/or the conduct of third parties was the sole and proximate cause, or a contributing proximate cause, of whatever loss Plaintiff has allegedly incurred and/or will allegedly incur, if any.

**TENTH SEPARATE AND AFFIRMATIVE DEFENSE**

(No Proximate Cause)

10. For its tenth and separate and affirmative defense, Ameriquest alleges that any injury allegedly suffered by Plaintiff was not proximately caused by any conduct on the part of Ameriquest.

**ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Failure to Mitigate)

11. For its eleventh separate and affirmative defense, Ameriquest alleges that Plaintiff has failed, refused and/or neglected to take reasonable and necessary steps to mitigate his alleged injuries, if any.

**TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Legitimate Business Transactions)

12. For its twelfth separate and affirmative defense, Ameriquest alleges that Plaintiff's claims are barred, in whole or in part, because Ameriquest acted at all times within the realm of legitimate business transactions.

**THIRTEENTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Lawful Conduct)

13. For its thirteenth separate and affirmative defense, Ameriquest alleges that Plaintiff's claims are barred, in whole or in part, because Ameriquest acted lawfully in defense of its own interests.

**FOURTEENTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Unconstitutional -- Violates Dormant Commerce Clause)

14. For its fourteenth separate and affirmative defense, Ameriquest alleges that the Oklahoma Fraudulent Use of Electronic Mail Statutes, 5. O.S. §§ 776.1 – 776.4, and the Oklahoma Unsolicited Commercial Electronic Mail Statutes; 15 O.S. §§ 776.5 – 776.7, are unconstitutional in that they violate the Dormant Commerce Clause of the United States Constitution.

**FIFTEENTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Contribution)

15. For its fifteenth separate and affirmative defense, Ameriquest alleges that any physical harm alleged could be attributed to several causes, and the damages for this harm, if any, should be apportioned among the various causes according to the contribution of each cause to the harm sustained.

**SIXTEENTH SEPARATE AND AFFIRMATIVE DEFENSE**

(No Duty)

16. For its sixteenth separate and affirmative defense, Ameriquest alleges that Ameriquest owes no duty to Plaintiff to control the alleged conduct of third parties.

**SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Ameriquest Excused)

17. For its seventeenth separate and affirmative defense, Ameriquest alleges that any purported act or omission on the part of Ameriquest was excused by the actions of Plaintiff.

**EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Authorization/Ratification)

18. For its eighteenth separate and affirmative defense, Ameriquest alleges that Plaintiff expressly, ostensibly and/or implicitly authorized or ratified the transactions alleged in the Amended Complaint.

**NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Commercially Reasonable Actions)

19. For its nineteenth separate and affirmative defense, Ameriquest alleges that Ameriquest acted in a commercially reasonable manner with regard to any contract at issue in this action.

**TWENTIETH SEPARATE AND AFFIRMATIVE DEFENSE**

(No Ratification By Ameriquest)

20. For its twentieth separate and affirmative defense, Ameriquest alleges that no officer, director, or managing agent of Ameriquest ratified the conduct alleged by Plaintiff.

**TWENTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE**

(Preemption)

21. For its twenty-first separate and affirmative defense, Ameriquest alleges that Plaintiff's state law claims are preempted by federal law, including but not limited to, the federal CAN-SPAM Act of 2003, 15 U.S.C. § 7701 *et seq.*

**TWENTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE**

(No Injury)

22. For its twenty-second separate and affirmative defense, Ameriquest alleges that Plaintiff has not suffered any compensable injury as a result of Ameriquest's alleged actions, and as a result, is not entitled to an award against Ameriquest.

**TWENTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE**

(Speculative Damage)

23. For its twenty-third separate and affirmative defense, Ameriquest alleges that the damages claimed by Plaintiff are speculative.

**TWENTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Frivolous Action)

24. For its twenty-fourth separate and affirmative defense, Ameriquest alleges that Plaintiff's claims in the Amended Complaint are frivolous and without foundation in fact. Furthermore, Plaintiff is pursuing this lawsuit in bad faith and for vexatious reasons and for the purpose of harassing Ameriquest. Accordingly, Ameriquest is entitled to recover its attorneys' fees and the appropriate costs and expenses in defending this action.

**TWENTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE**

(No Negligent Or Willful Conduct)

25. For its twenty-fifth separate and affirmative defense, Ameriquest alleges that Plaintiff's claims are barred, in whole or in part, because Ameriquest acted in accordance with its responsibilities under all applicable laws and did not engage in willful and/or negligent conduct with respect to Plaintiff or in any other conduct that would subject Ameriquest to liability or damages to Plaintiff.

**TWENTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Failure to Join Indispensable Party)

26. For its twenty-sixth separate and affirmative defense, Ameriquest alleges that the injuries or damages of which Plaintiff complains were caused in part or in whole by non-parties whom Plaintiff has failed to join in this action.

**TWENTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Several Liability)

27. For its twenty-seventh separate and affirmative defense, Ameriquest alleges that should Plaintiff prevail in this action, Ameriquest's liability is several and limited to its own actionable segment of fault, if any.

**TWENTY-EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Privilege)

28. For its twenty-eighth separate and affirmative defense, Ameriquest alleges that the acts and/or omissions allegedly made by Ameriquest were privileged under state and federal law.

**TWENTY-NINTH SEPARATE AND AFFIRMATIVE DEFENSE**

(Justification)

29. For its twenty-ninth separate and affirmative defense, Ameriquest alleges that the acts and/or omissions alleged in the Amended Complaint were justified by Ameriquest.

**THIRTIETH SEPARATE AND AFFIRMATIVE DEFENSE**

(Third Party Independent Contractors)

30. For its thirtieth separate and affirmative defense, Ameriquest alleges that the acts and/or omissions alleged in the Amended Complaint were committed by third party independent

contracts for which Ameriquest has no responsibility.

**THIRTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE**

(Deprivation of Property Without Due Process of Law)

31. For its thirty-first separate and affirmative defense, Ameriquest alleges that Plaintiff's alleged statutory damages are so grossly disproportionate to any actual damages suffered by Plaintiff as to constitute a deprivation of property without due process of law.

**THIRTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE**

(Reservation of Defenses)

32. For its thirty-second separate and affirmative defense, Ameriquest alleges that because of lack of information as to the matters alleged in the Amended Complaint, Ameriquest may not have sufficient knowledge upon which to form a belief as to whether additional, as yet unstated, affirmative defenses exist, and hereby reserves the right to assert such additional affirmative defense(s) in the event subsequent discovery indicates that the same are proper.

**PRAAYER FOR RELIEF**

WHEREFORE, Defendant Ameriquest Mortgage Company prays for judgment as follows:

1. That Plaintiff takes nothing by the Amended Complaint;
2. That the Amended Complaint, and each of its purported causes of action, be dismissed with prejudice;
3. That the Court award Ameriquest expenses and costs, including attorneys' fees to the extent allowed by law in this action;



