

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

ROBERT H. BRAVER, an individual,)
Plaintiff,)
vs.)
AMERIQUEST MORTGAGE COMPANY, a)
Delaware corporation, INNOVATIVE MARKETING,)
INC., d/b/a LEAD EXTREME, a Washington corporation,)
THE LOAN PAGE, INC., a Delaware corporation,)
STECROFT HOLDINGS, INC., as successor in interest to)
GO APPLY, INC., d/b/a ELEADZ, a Nevada corporation,)
JOHN DOES 1-50, MI SOLUTIONS, INC., a California)
corporation, LEAD ASSOCIATION CORP, a California)
corporation, THE LEAD SOURCE, INC., a California)
corporation, COMMISSION JUNCTION, INC., a)
Delaware corporation, AVALON TRADING COMPANY,)
LLC, a California corporation, IMPACT WEB)
ENTERPRISES, INC., a California corporation,)
LEAD2.NET, INC., a Florida corporation, SUNBURN)
MARKETING GROUP, LLC, a California limited liability)
company, MONEYNEST HOLDINGS, INC., a California)
Corporation, INTERNATIONAL WEBWORKS.COM,)
LLC, a Colorado limited liability company, NICK)
HETCHER, an individual, LIBERTY LEAD SOURCE,)
INC, a Nevada corporation, TIM FAUST, an individual,)
DOTCOM MARKETING GROUP, INC., a Florida)
corporation, INETMEDIA, a California corporation,)
LEADCORP, a California corporation, LEAD)
TRANSFER, LLC, a Nevada limited liability company,)
ABACUS ENTERPRISES, INC., a California corporation,)
TANDAX, INC., a Washington corporation)
Defendants.)

Case No. CIV-04-1013-W

AMERIQUEST MORTGAGE)
COMPANY, a Delaware corporation,)
Cross-Complainant,)
vs.)
INNOVATIVE MARKETING, INC. d/b/a)
LEAD EXTREME, a Washington Corporation;)
VISIUM SOLUTIONS CORPORATION, a)
Florida corporation; and PROFESSIONAL)
EQUITY MARKETING, a California)
Corporation, and ROES I-50, inclusive,)
Cross-Defendant.)

**PLAINTIFF'S COMBINED MOTION TO COMPEL DEFENDANT AMERIQUEST
MORTGAGE COMPANY TO RESPOND TO PLAINTIFF'S FIRST SET OF
DISCOVERY SERVED ON MAY 3, 2005 AND BRIEF IN SUPPORT**

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COMES NOW, the Plaintiff, Robert H. Braver, and after good faith attempts to resolve this issue without the intervention of the Court, hereby requests that the Court compel Defendant Ameriquest Mortgage Company (“Ameriquest”) to respond fully to Plaintiff’s First Set of Discovery Requests served on May 3, 2005. This motion is made pursuant to FRCP 37 and Local Rules 7.2 and 37.1. In support of this motion, Plaintiff states as follows:

1. Ameriquest is the knowing purchaser of mortgage leads generated by fraudulent emails in violation of state and federal laws designed to eliminate spam. Plaintiff Braver is an individual and owner of an electronic server that has been, and is being, deluged by a torrent of mortgage spam. This action is brought under the federal CAN-SPAM Act of 2003, 15 U.S.C. § 7701 et. seq (“CAN-SPAM Act”), and Title 15, Oklahoma Statute §§ 776.1-776.7. Plaintiff seeks information pertaining to Defendant’s knowledge of the use of spam leads in email or internet marketing which was sent to Plaintiff.

2. Luke Wallace, Counsel for Plaintiff, and Kalley Aman, Counsel for Defendant Ameriquest have engaged in a good faith conference and have exhausted all good faith efforts to resolve this dispute without court intervention.

3. Due to the distance between counsels’ offices, Tulsa, Oklahoma and California, a personal conference was not feasible, therefore counsel engaged in a two and one-half hour telephone conference on June 17, 2005.

4. On June 21 2005, Counsel for Ameriquest sent Counsel for Plaintiff written correspondence providing a limited supplementation to the discovery, but continued to refuse to fully respond to discovery critical to Plaintiff’s investigation.

I. RELEVANT SECTIONS OF THE CAN-SPAM ACT

The purpose of the disputed discovery is to determine whether Ameriquest violated provisions of the CAN-SPAM Act and state law, specifically what did Ameriquest know (or avoid knowing) about the spam mortgage activities of the “lead generating” Defendants.

The CAN-SPAM Act went into effect on January 1, 2004. Section 5(a)(1) of the CAN-SPAM Act, 15 U.S.C. § 7704 (a)(1) (2004), states:

It is unlawful for any person to initiate¹ and ² the transmission, to a protected computer, of a commercial electronic mail message, or a transactional or relationship message, that contains, or is accompanied by, header information that is materially false or materially³ misleading. For the purposes of this paragraph-

(A) header information that is technically accurate but includes an originating electronic mail address, domain name, or Internet Protocol address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations shall be considered materially misleading

¹ The term “initiate”, when used with respect to a commercial electronic mail message, means to originate or transmit such message or to *procure*² the origination or transmission of such message, but shall not include actions that constitute routine conveyance of such message. For purposes of this paragraph, more than one person may be considered to have initiated a message. 15 U.S.C. § 7702 (9) (emphasis added)

² The term “procure,” when used with respect to the initiation of a commercial electronic mail message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one’s behalf . . . with actual knowledge, or by consciously avoiding knowing, whether such person is engaging, or will engage in a pattern or practice that violates this Act. 15 U.S.C. § 7702 (12); 15 U.S.C. § 7706 (g)(2)

³ [T]he term “materially,” when used with respect to false or misleading header information, includes the alteration or concealment of header information in a manner that would impair the ability of an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation, or the ability of a recipient of the message to respond to a person who initiated the electronic message.

Section 5(a)(2) of the CAN-SPAM Act, 15 U.S.C. § 7704 (a)(2)(2004), states:

It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message if such person has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that a subject heading of the message would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message (consistent with the criteria used in enforcement of section 5 of the Federal Trade Commission Act (15 U.S.C. § 45)).

In its discovery responses and throughout the course of the telephone conference, Ameriquest has taken the position that Braver is not entitled to a single document that does not directly relate to “a discrete set of emails sent to Braver.” Ameriquest has improperly restricted the scope of relevant inquiry in this case. The CAN-SPAM Act requires Braver to prove that Ameriquest “initiate[d]” the fraudulent spam email messages. 15 U.S.C. § 770 (9). Under the act, the definition of “initiate” includes to “procure” and expressly contemplates that more than one person may be considered to have initiated a message. 15 U.S.C. § 7702 (9). In order for Braver to prove Ameriquest procured the subject spam emails, he must show Ameriquest intentionally paid or provided other consideration to or induced another person to initiate the email message on Ameriquest’s behalf with actual knowledge or by consciously avoiding knowing whether such person is engaging, or will engage, in a pattern or practice that violates the act. 15 U.S.C. § 7702 (12); 15 U.S.C. 7706 (g)(2). Plaintiff’s discovery requests are specifically tailored to discover Ameriquest’s actual knowledge and circumstantial evidence that tends to prove that Ameriquest consciously avoided knowing that the spammers from whom it was buying leads were engaging, or would engage, in violations of the CAN-SPAM Act.

II. AMERIQUEST'S BOILERPLATE OBJECTIONS

Ameriquest asserts a laundry list of identical objections to virtually all of Plaintiff's discovery. Ameriquest objects repeatedly on the grounds that the requests are not limited in time. All the discovery propounded by Plaintiff *was* limited by instruction, "Q. Unless otherwise stated, the period for this discovery is the earliest date upon which you entered into any contract with any of the Cross-Defendants."

Ameriquest's responses included objections based upon attorney-client privilege and/or work product. None of these objections comply with FRCP 26(b)(5) which require Ameriquest to provide a description of what is not produced or disclosed without revealing the privileged or protected information.

Ameriquest further asserted that the documents or information requested calls for "confidential, proprietary or trade secret information." Plaintiff and Ameriquest have agreed upon the terms of a Protective Order. Plaintiff recently filed a Motion for Protective Order (Document No. 102). A Protective Order would appear to resolve or render moot this objection, but Ameriquest has refused to remove this objection to discovery or produce the requested records.

III. DISPUTED DISCOVERY REQUESTS

Plaintiff seeks an order compelling Defendant to respond to the following requests without objection.

REQUEST FOR PRODUCTION NO. 10: Produce all documents related to any analysis, consideration or criticism of the decision to purchase sales leads from Innovative Marketing, Inc., d/b/a Lead Extreme.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10: Ameriquest incorporates by reference its Preliminary Statement and General Objections as though set forth in full here, and further objects to this request on the following grounds:

- (a) it is vague, ambiguous, and unintelligible;
- (b) it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence;
- (c) it seeks information that is protected from disclosure by the attorney client privilege and/or the attorney work product doctrine;
- (d) it is overbroad in time and scope;
- (e) it may seek information that is protected by a constitutional right of privacy; and
- (f) it seeks information that is confidential, proprietary and a trade secret belonging to Ameriquest.

Notwithstanding and without waiving the foregoing objections, Ameriquest responds as follows: Ameriquest will produce non-privileged documents responsive to this request, if any exist, only to the extent that they relate to email marketing by Lead Extreme during the relevant time periods in question. To the extent such documents even exist, Ameriquest will redact any confidential consumer information contained in the documents.

REQUEST FOR PRODUCTION NO. 11: Produce all documents related to any analysis, consideration or criticism of the decision to purchase sales leads from GO APPLY, INC. d/b/a ELEADZ.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: Ameriquest's response to Request for Production No. 11 was identical to its response to Request for Production No. 10, except it substituted "GO APPLY, INC. d/b/a ELEADZ" for "LEAD EXTREME".

REQUEST FOR PRODUCTION NO. 12: Produce all documents related to any analysis, consideration or criticism of the decision to purchase sales leads from THE LOAN PAGE, INC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: Again, Ameriquest's response to Request for Production No. 12 was identical to its response to Request for Production No. 10, except it substituted "THE LOAN PAGE, INC." for "LEAD EXTREME".

Request for Production Numbers 10, 11 and 12 seek to discover documents that bear upon Ameriquest's actual knowledge and the knowledge it consciously avoided about the spamming activities of the three lead-generating defendants. Ameriquest, in its Response, agrees to produce documents only to the extent they relate to "email marketing" by each of these three lead generators during the limited time period. What appears on the surface to be an offer to produce documents that

could be relevant to this litigation is, in fact, evasive. The lead generating agreement entered into between Ameriquest and Lead Extreme does not relate to "email marketing." In the agreement, attached hereto as Exhibit "1," Lead Extreme represents that it owns and operates the "QuoteGuru.com" website, which enables consumers to input personal information concerning their individual mortgage needs. In the agreement, Lead Extreme promises that it shall timely transmit to Ameriquest consumer information obtained by Lead Extreme through the website. This agreement, which created the relationship out of which the fraudulent spam was created, was for internet marketing, not email marketing. Ameriquest should be ordered to fully respond to these requests.

REQUEST FOR PRODUCTION NO. 7: Produce all memoranda, notes or other documents describing, discussing, supporting, evaluating, addressing or criticizing the use of electronic mail to generate sales leads.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: Ameriquest incorporates by reference its Preliminary Statement and General Objections as though set forth in full here, and further objects to this request on the following grounds:

- (a) it is vague, ambiguous, and unintelligible;
- (b) it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence;
- (c) it seeks information that is protected from disclosure by the attorney client privilege and/or the attorney work product doctrine;
- (d) it seeks information that is confidential, proprietary and a trade secret belonging to Ameriquest;
- (e) it is overbroad in time and scope;
- (f) a response would cause Ameriquest undue expense, burden and oppression;
- (g) it fails to describe with reasonable particularity the items sought to be inspected; and
- (h) it is intended to harass and annoy Ameriquest.

Based on the foregoing objections, Ameriquest will not produce any documents responsive to this request.

Request for Production No. 7 is limited to documents which are related to the subject of the "use of electronic mail to generate sales leads." The use of fraudulent electronic mail to generate

sales leads is what this case is about. Documents within Ameriquest's possession, custody or control that relate to the use of electronic mail to generate sales leads is relevant to Plaintiff's claim that Ameriquest knew, or consciously avoided knowing, that the leads it was purchasing were obtained through the use of deceptive, misleading or fraudulent electronic mail.

REQUEST FOR PRODUCTION NO. 8: Produce all memoranda, notes or other documents describing, discussing, supporting, evaluating, addressing or criticizing the use of internet marketing to generate sales leads.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: Ameriquest's response to Request for Production No. 8 was identical to its response to Request for Production No. 7.

Request No. 8 is the same as No. 7, except that instead of relating to the "use of electronic mail," No. 8 relates to the "use of internet marketing to generate sales leads." Again, Ameriquest entered into an agreement with Lead Extreme to purchase sales leads generated by internet marketing, not electronic mail marketing. As for the other defendants in this action, Plaintiff does not know what the terms of the agreements, if any, are because Ameriquest has refused to produce these documents, claiming they are confidential. Obviously Ameriquest is ignoring the fact that it attached its agreement with Lead Extreme to the Cross Claim (Document No. 9) it filed against Lead Extreme. It was out of this marketing agreement that the fraudulent spam electronic mail was caused to be sent.

REQUEST FOR PRODUCTION NO. 9: Produce all memoranda, notes or other documents describing, discussing, supporting, evaluating, addressing or criticizing the purchase of sales leads generated by internet marketing or electronic mail.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: Ameriquest's response to Request for Production No. 9 was identical to its response to Request for Production No. 7.

Request for Production No. 9 differs from No. 7 in that it focuses upon "the purchase" of sales leads generated by either internet marketing or electronic mail versus the use of email to

generate sales leads. These documents will shed light upon Ameriquest's actions or inaction, as the case may be, upon receiving notice that the "leads" it was responding to were obtained by fraudulent spam electronic mail. Did Ameriquest knowingly continue to purchase mortgage leads from lead generators in spite of complaints/inquiries or notices from others that it had been obtained by way of a deceptive, misleading or fraudulent electronic mail? The documents requested will provide some evidence on this issue.

REQUEST FOR PRODUCTION NO. 16: Produce any suggestion, proposal or directive to modify, or in any way alter your contracts with Innovative Marketing, Inc., d/b/a Lead Extreme.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16: Ameriquest incorporates by reference its Preliminary Statement and General Objections as though set forth in full here, and further objects to this request on the following grounds:

- (a) it is vague, ambiguous, and unintelligible;
- (b) it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence;
- (c) it seeks information that is protected from disclosure by the attorney client privilege and/or the attorney work product doctrine;
- (d) it is overbroad in time and scope;
- (e) it seeks information that is confidential, proprietary and a trade secret belonging to Ameriquest.

Notwithstanding and without waiving the foregoing objections, Ameriquest responds as follows: Ameriquest will produce non-privileged documents responsive to this request that are relevant to the subject matter and time period of the action, and subject to the entry of the Stipulated Protective Order.

REQUEST FOR PRODUCTION NO. 17: Produce any suggestion, proposal or directive to modify, or in any way alter your contracts with GO APPLY, INC. d/b/a ELEADZ.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17: Ameriquest's response to Request for Production No. 17 is the same as its response to Request for Production No. 16.

REQUEST FOR PRODUCTION NO. 18: Produce any suggestion, proposal or directive to modify, or in any way alter your contracts with THE LOAN PAGE, INC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18: Ameriquest's response to Request for Production No. 18 is the same as its response to Request for Production No. 16.

REQUEST FOR PRODUCTION NO. 42: Produce the Loan Purchase Agreements and any amendments and/or addendums thereto with Cross-Defendants and any other third party lead generator who may have sent an email to Plaintiff or any person associated with Plaintiff.

RESPONSE TO REQUEST FOR PRODUCTION NO. 42: Ameriquest incorporates by reference its Preliminary Statement and General Objections as though set forth in full here, and further objects to this request on the following grounds:

- (a) it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence;
- (b) it is overbroad in time and scope;
- (c) it seeks information that is confidential, proprietary and a trade secret belonging to Ameriquest;
- (d) it is vague, uncertain, and ambiguous, particularly with respect to the phrase "associated with Plaintiff".

Notwithstanding and without waiving the foregoing objections, Ameriquest responds as follows: Ameriquest will produce the Lead Purchase Agreements and amendments and addendums thereto with Cross-Defendants which are relevant to the time periods in question subject to the entry of the Stipulated Protective Order.

Ameriquest does not know how many aliases Plaintiff has or how many or which persons are associated with Plaintiff.

The documents requested in Request for Production Nos. 16, 17, 18 and 42 are calculated to discover Ameriquest's knowledge of the use of fraudulent email by spammers to generate sales leads. Ameriquest responds that it will produce documents responsive that are "relevant to the subject matter and time period of the action" In follow-up communication by telephone with counsel, Ameriquest has agreed to produce responsive documents to the extent they "relate to the issues in the case." According to Ameriquest, this case is only about "a discrete set of emails that Mr. Braver claims to have received from certain lead generators from whom Ameriquest may purchase leads." Ameriquest wants to place the focus on Braver's emails and thereby plausibly deny and avoid having to produce the records requested in Nos.

16, 17, 18 and 42 on the grounds that those documents do not relate to email marketing. Again, the focus of the CAN-SPAM Act is upon what Ameriquest knew or consciously avoided knowing. Did Ameriquest know that its lead generators were sending out deceptive, misleading and fraudulent spam mortgage emails in order to generate a lead? Suggestions, proposals, directives or modifications to agreements Ameriquest has had with these lead generators could provide circumstantial evidence of Ameriquest's knowledge.

REQUEST FOR PRODUCTION NO. 19: Produce all monthly, quarterly and annual financial statements prepared in the last 7 years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19: Ameriquest incorporates by reference its Preliminary Statement and General Objections as though set forth in full here, and further objects to this request on the following grounds:

- (a) it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence;
- (b) it is overbroad in time and scope;
- (c) it seeks information that is confidential, proprietary and a trade secret belonging to Ameriquest;
- (d) it seeks information that is protected by a right of privacy;
- (e) it is vague, ambiguous, and uncertain;
- (f) the request is intended to harass and annoy Ameriquest.

Based on the foregoing objections, Ameriquest will not produce any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 20: Produce all budgets, financial projections or other documents containing any reference to the cost or profitability of sales leads purchased by you.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20: Ameriquest incorporates by reference its Preliminary Statement and General Objections as though set forth in full here, and further objects to this request on the following grounds:

- (a) it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence;
- (b) it is overbroad in time and scope;
- (c) it seeks information that is confidential, proprietary and a trade secret belonging to Ameriquest;
- (d) it seeks information that is protected by a right of privacy;
- (e) it is vague, ambiguous and uncertain;

- (f) the request is intended to harass and annoy Ameriquest; and
- (g) a response would cause Ameriquest undue expense, burden and oppression.

Based on the foregoing objections, Ameriquest will not produce any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 21: Produce all financial statements or other records containing any reference to sales leads purchased by you, or sales leads generated from electronic mail or internet marketing.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21: Ameriquest's response to Request for Production No. 21 was identical to its response to Request for Production No. 20.

REQUEST FOR PRODUCTION NO. 22: Produce all budgets or other records containing any reference to sales leads purchased by you, or sales leads generated by electronic mail or internet marketing.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22: Ameriquest's response to Request for Production No. 22 was identical to its response to Request for Production No. 20.

Contrary to Ameriquest's claims that the information requested in Requests for Production Nos. 19, 20, 21, and 22 is wholly irrelevant, the documents requested are relevant to the claims of Braver. To the extent that the internal financial records of Ameriquest will show that Ameriquest tracks what it spends on mainstream legitimate marketing, i.e. television advertisements, radio advertisements, and mailing, versus "lead" marketing, as well as the profit it generates from mainstream media marketing versus intense "lead" marketing. Plaintiff has alleged that Ameriquest gained an unfair competitive advantage over other major mortgage lenders by purchasing leads below market cost when compared to the cost to obtain leads through legitimate, mainstream marketing. This information is relevant to issues of Ameriquest's knowledge that it bought leads generated from fraudulent email.

REQUEST FOR PRODUCTION NO. 31: Produce all documents describing the total amount paid to Innovative Marketing, Inc., d/b/a Lead Extreme in 2001, 2002, 2003, 2004, and 2005.

RESPONSE TO REQUEST FOR PRODUCTION NO. 31: Ameriquest incorporates by reference its Preliminary Statement and General Objections as though set forth in full here, and further objects to this request on the following grounds:

- (a) it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence;
- (b) it is overbroad in time and scope;
- (c) it seeks information that is confidential, proprietary and a trade secret belonging to Ameriquest.

Based on the foregoing objections, Ameriquest will not produce any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 32: Produce all documents describing the total amount paid to GO APPLY, INC. d/b/a ELEADZ in 2001, 2002, 2003, 2004, and 2005.

RESPONSE TO REQUEST FOR PRODUCTION NO. 32: Ameriquest 's response to Request for Production No. 32 was identical to its response to Request for Production No. 31.

REQUEST FOR PRODUCTION NO. 33: Produce all documents describing the total amount paid to THE LOAN PAGE, INC. in 2001, 2002, 2003, 2004, and 2005.

RESPONSE TO REQUEST FOR PRODUCTION NO. 33: Ameriquest's response to Request for Production No. 33 was identical to its response to Request for Production No. 31.

REQUEST FOR PRODUCTION NO. 34: Produce all documents describing the number of sales leads purchased from Innovative Marketing, Inc., d/b/a Lead Extreme in 2001, 2002, 2003, 2004, and 2005.

RESPONSE TO REQUEST FOR PRODUCTION NO. 34: Ameriquest incorporates by reference its Preliminary Statement and General Objections as though set forth in full here, and further objects to this request on the following grounds:

- (a) it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence;
- (b) it is vague, uncertain, and ambiguous;
- (c) it is overbroad in time and scope;
- (d) it seeks information that is confidential, proprietary and a trade secret belonging to Ameriquest;
- (e) a response would cause Ameriquest undue expense, burden and oppression; and
- (f) it may seek information that is protected by a constitutional right of privacy.

Based on the foregoing objections, Ameriquest will not produce any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 35: Produce all documents describing the number of sales leads purchased from GO APPLY, INC. d/b/a ELEADZ in 2001, 2002, 2003, 2004, and 2005.

RESPONSE TO REQUEST FOR PRODUCTION NO. 35: Ameriquest's response to Request for Production No. 35 was identical to its response to Request for Production No. 34.

REQUEST FOR PRODUCTION NO. 36: Produce all documents describing the number of sales leads purchased from THE LOAN PAGE, INC. in 2001, 2002, 2003, 2004, and 2005.

RESPONSE TO REQUEST FOR PRODUCTION NO. 36: Ameriquest's response to Request for Production No. 36 was identical to its response to Request for Production No. 34.

Requests for Production Nos. 31 through 36 seeks documents which, upon information and belief will show whether the contractual relationship between Ameriquest and the lead generator defendants continued and more importantly will shed light on exactly how cozy their relationship was after Ameriquest received notice of the unlawful activities of the various lead generators. The information requested will allow Plaintiff to show that even though Ameriquest was receiving complaints/inquiries and notices about the leads it was purchasing, it chose to ignore these complaints and to continue purchasing leads from the lead generator defendants.

REQUEST FOR PRODUCTION NO. 37: Produce all documents reporting or describing the "conversion rate" or other method(s) you use to track and/or evaluate the value or quality of sales leads purchased from Innovative Marketing, Inc., d/b/a Lead Extreme during 2001, 2002, 2003, 2004, and 2005.

RESPONSE TO REQUEST FOR PRODUCTION NO. 37: Ameriquest incorporates by reference its Preliminary Statement and General Objections as though set forth in full here, and further objects to this request on the following grounds:

- (a) it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence;

- (b) it is overbroad in time and scope;
- (c) it seeks information that is confidential, proprietary and a trade secret belonging to Ameriquest;
- (d) it is vague, uncertain, and ambiguous;

Based on the foregoing objections, Ameriquest will not produce any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 38: Produce all documents reporting or describing the “conversion rate” or other method(s) you use to track and/or evaluate the value or quality of sales leads purchased from GO APPLY, INC. d/b/a ELEADZ during 2001, 2002, 2003, 2004, and 2005.

RESPONSE TO REQUEST FOR PRODUCTION NO. 38: Ameriquest’s response to Request for Production No. 38 was identical to its response to Request for Production No. 37.

REQUEST FOR PRODUCTION NO. 39: Produce all documents reporting or describing the “conversion rate” or other method(s) you use to track and/or evaluate the value or quality of sales leads purchased from THE LOAN PAGE, INC. during 2001, 2002, 2003, 2004, and 2005.

RESPONSE TO REQUEST FOR PRODUCTION NO. 39: Ameriquest’s response to Request for Production No. 39 was identical to its response to Request for Production No. 37.

REQUEST FOR PRODUCTION NO. 40: Produce all records, memos, studies or other documents comparing the cost or benefit of sales leads generated by electronic mail or internet marketing; or any other source for obtaining sales leads.

RESPONSE TO REQUEST FOR PRODUCTION NO. 40: Ameriquest incorporates by reference its Preliminary Statement and General Objections as though set forth in full here, and further objects to this request on the following grounds:

- (a) it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence;
- (b) it is overbroad in time and scope;
- (c) it seeks information that is confidential, proprietary and a trade secret belonging to Ameriquest;
- (d) a response would cause Ameriquest undue expense, burden and oppression; and
- (e) it is vague, uncertain, and ambiguous;

Based on the foregoing objections, Ameriquest will not produce any documents responsive to this request.

Plaintiff has alleged that Ameriquest essentially ignored the huge problem of fraudulent emails used to generate mortgage leads. Ameriquest's internal evaluation of the availability or value of spam-generated leads is relevant to establishing knowledge of the origin of these leads. The sales records sought are relevant because they may establish whether Ameriquest knew it was purchasing sales leads generated by spam.

REQUEST FOR PRODUCTION NO. 23: Produce a copy all lawsuits, petitions and/or complaints concerning fraudulent electronic mail or your purchase of sales leads generated by electronic mail or internet marketing.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23: Ameriquest incorporates by reference its Preliminary Statement and General Objections as though set forth in full here, and further objects to this request on the following grounds:

- (a) it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence;
- (c) it seeks information that is confidential, proprietary and a trade secret belonging to Ameriquest;
- (d) it is overbroad in time and scope;
- (e) it seeks information that is equally available to Plaintiff through a search of the public records; and
- (f) it is vague, ambiguous, and uncertain.

Based on the foregoing objections, Ameriquest will not produce any documents responsive to this request.

INTERROGATORY NO. 5: State whether this Defendant has ever been sued or had a claim made, which relates directly or indirectly to fraudulent electronic mail or sales leads generated by electronic mail or internet marketing, whether or not any litigation ensued, and if so, state the date that the complaint or claim was made, or the date of filing of the Petition or Complaint; the name of the Plaintiff, the name of the Plaintiff's attorney; the Court or jurisdiction of each action; the subject matter of the claim; and the resolution of the matter.

RESPONSE TO INTERROGATORY NO. 5: Ameriquest incorporates by reference its Preliminary Statement and General Objections as though set forth in full here, and further objects to this request on the following grounds:

- (a) it seeks information which is protected from disclosure by the attorney client privilege and attorney work product doctrine;

- (b) it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence;
- (c) it is vague, ambiguous, uncertain and unintelligible;
- (d) it is overbroad in time and scope; and
- (e) it is compound

Based on the foregoing objections, Ameriquest will not respond to this request.

INTERROGATORY NO. 9: Has anyone ever claimed that Ameriquest or lead generators who have Lead Purchase Agreements with Ameriquest sent or were responsible for sending fraudulent electronic mail? If so, please identify that person by name, address, telephone number and identify all documents related to any such claim or allegation.

RESPONSE TO INTERROGATORY NO. 9: Ameriquest incorporates by reference its Preliminary Statement and General Objections as though set forth in full here, and further objects to this request on the following grounds:

- (a) it may seek information which is protected from disclosure by the attorney client privilege and attorney work product doctrine;
- (b) it is vague and ambiguous;
- (c) it is overbroad in time and scope;
- (d) it seeks information which is not relevant to the subject matter of this action and not likely to lead to the discovery of admissible evidence;
- (e) it seeks information which is protected by a right of privacy; and
- (f) a response would cause Ameriquest undue expense, burden and oppression.

Based on the foregoing objections, Ameriquest will not respond to this request.

INTERROGATORY NO. 10: Has anyone ever claimed that Ameriquest or lead generators who have Lead Purchase Agreements with Ameriquest sent or caused to be sent unlawful, misleading, deceptive and/or fraudulent commercial electronic mail messages? If so, please identify the name, address and telephone number of the person(s) making such a claim or allegation and identify all documents related to such a claim or allegation.

RESPONSE TO INTERROGATORY NO. 10: Ameriquest's response to Interrogatory No. 10 was identical to its response to Interrogatory No. 9.

INTERROGATORY NO. 11: Has any official or representative of any municipal, county, state, federal or other governmental entity ever investigated a) any electronic mail or alleged fraudulent electronic mail you or any Cross-Defendant sent or caused to be sent or b) your purchase of sales leads from

electronic mail or internet marketing? If so, please identify by name, address and telephone number of the person and governmental entity who investigated.

RESPONSE TO INTERROGATORY NO. 11: Ameriquest's response to Interrogatory No. 11 was identical to its response to Interrogatory No. 9.

The information requested in Request for Production No. 23 and Interrogatories Nos. 5, 9, 10 and 11 all seek information relevant to the issue of Ameriquest's knowledge. Ameriquest has now agreed to supplement its responses to Request for Production No. 23 and Interrogatory No. 10 to the extent it relates to the lead generators in this case. Ameriquest's agreement to supplement is not sufficient. Regardless of whether it relates to one of the lead generator defendants or not, the requested information seeks Ameriquest's knowledge, which is not limited to the activities of lead-generator defendants only. Plaintiff anticipates being able to present evidence in this case that the mortgage lead business engaged in by Ameriquest is permeated by systematic fraud.

REQUEST FOR PRODUCTION NO. 44: Produce all documents relating to Ameriquest's contacts with Plaintiff and/or the decoy names and/or decoy phone numbers below which were used by Plaintiff in connection with purchased leads that are the subject of the action:

"Decoy" Lead Name	Location	Phone #	Appx. Date
-----	-----	-----	-----
Maren Eliason	Norman, OK	unknown	July '03
Gregory Annapolis	St Louis, MO	314-779-0134	July '03
Roger Griffith	Norman, OK	405-253-4058	Oct. '03
Martin Wilkinson	Atlanta, GA	mwilkins@wilburnet.com	Dec. '03
Ron Bartles	St Louis, MO	314-754-7458	Jan. '04
Jerry Pickering	Moore, OK	405-227-9517	Jan. '04
Clayton Fountain	Los Angeles, CA	213-596-9700	Jan. '04
Shiela Rhodes	Oklahoma City, OK	405-227-9517	April '04
Frederick Fremont	Mt. Pleasant, SC	843-972-0294	June '04
Zachariah Winkle	Dallas, TX	214-269-1166	June '04
Jake Sparks	W. Bloomfield, MI	248-724-1711	July '04
Randi Tatum	Detroit, MI	313-347-2719	July '04
Leroy Crockett	Houston, TX	713-474-1417	Aug. '04
Robbie Phipps	Denver, CO	303-785-1755	Sep. '04
Cleo Benitez	Dallas, TX	214-269-1258	Dec. '04
Maribel Bacon	Newark, NJ	212-400-7514	Dec. '04
Pace O'Dell	Terrell, TX	972-210-0223	Jan '05

Taylor Askew	Dallas, TX	214-699-0104	Jan. '05
Golda Coleman	Kansas City, KS	913-378-0311	Apr. '05
Wendell Slater	Dallas, TX	214-329-1776	Apr. '05

RESPONSE TO REQUEST FOR PRODUCTION NO. 44: Ameriquest incorporates by reference its Preliminary Statement and General Objections as though set forth in full here, and further objects to this request on the following grounds:

- (a) it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence;
- (b) it seeks information that is confidential, proprietary and a trade secret belonging to Ameriquest;
- (c) it may seek information that is subject to a constitutional right of privacy;
- (d) it is vague, ambiguous and uncertain;
- (e) it may seek information which is protected from disclosure by the attorney client privilege and attorney work product doctrine; and

Notwithstanding and without waiving the foregoing objections, Ameriquest responds as follows: Ameriquest has no idea whether Plaintiff's representation in these discovery requests that these names are "decoys: is true or accurate. Ameriquest will not produce responsive documents until Plaintiff has provided Ameriquest with information regarding the veracity and background of these alleged "decoys." If these "decoys" are individuals, their information is protected by privacy rights and Ameriquest cannot disclose it as a matter of law.

Ameriquest will produce responsive documents relative to Plaintiff and any aliases, i.e. fictitious persons, subject to Plaintiff's showing that these are fictitious persons.

INTERROGATORY NO. 13: Identify the entities from which Ameriquest obtained leads for the following decoy names and decoy phone numbers used by the Plaintiff:

"Decoy" Lead Name	Location	Phone #	Appx. Date
-----	-----	-----	-----
Maren Eliason	Norman, OK	unknown	July '03
Gregory Annapolis	St Louis, MO	314-779-0134	July '03
Roger Griffith	Norman, OK	405-253-4058	Oct. '03
Martin Wilkinson	Atlanta, GA	mwilkins@wilburnet.com	Dec. '03
Ron Bartles	St Louis, MO	314-754-7458	Jan. '04
Jerry Pickering	Moore, OK	405-227-9517	Jan. '04
Clayton Fountain	Los Angeles, CA	213-596-9700	Jan. '04
Shiela Rhodes	Oklahoma City, OK	405-227-9517	April '04
Frederick Fremont	Mt. Pleasant, SC	843-972-0294	June '04
Zachariah Winkle	Dallas, TX	214-269-1166	June '04
Jake Sparks	W. Blomfield, MI	248-724-1711	July '04

Randi Tatum	Detroit, MI	313-347-2719	July '04
Leroy Crockett	Houston, TX	713-474-1417	Aug. '04
Robbie Phipps	Denver, CO	303-785-1755	Sep. '04
Cleo Benitez	Dallas, TX	214-269-1258	Dec. '04
Maribel Bacon	Newark, NJ	212-400-7514	Dec. '04
Pace O'Dell	Terrell, TX	972-210-0223	Jan '05
Taylor Askew	Dallas, TX	214-699-0104	Jan. '05
Golda Coleman	Kansas City, KS	913-378-0311	Apr. '05
Wendell Slater	Dallas, TX	214-329-1776	Apr. '05

RESPONSE TO INTERROGATORY NO. 13: Ameriquest incorporates by reference its Preliminary Statement and General Objections as though set forth in full here, and further objects to this request on the following grounds:

- (a) it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence;
- (b) it seeks information that is confidential, proprietary and a trade secret belonging to Ameriquest;
- (g) it may seek information that is subject to a constitutional right of privacy;
- (h) it is vague, ambiguous and uncertain;
- (i) it may seek information which is protected from disclosure by the attorney client privilege and attorney work product doctrine; and

Notwithstanding and without waiving the foregoing objections, Ameriquest responds as follows: Ameriquest has no idea whether Plaintiff's representation in these discovery requests that these names are "decoys: is true or accurate. Ameriquest will not produce responsive documents until Plaintiff has provided Ameriquest with information regarding the veracity and background of these alleged "decoys." If these "decoys" are individuals, their information is protected by privacy rights and Ameriquest cannot disclose it as a matter of law.

Ameriquest will produce responsive documents relative to Plaintiff and any aliases, i.e. fictitious persons, subject to Plaintiff's showing that these are fictitious persons.

REQUEST FOR PRODUCTION NO. 41: Produce the complete lead record obtained and disposition for each entity identified in Defendant's response to Interrogatory No. 13.

RESPONSE TO REQUEST FOR PRODUCTION NO. 41: Ameriquest incorporates by reference its Preliminary Statement and General Objections as though set forth in full here, and further objects to this request on the following grounds:

- (a) it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence;
- (b) it is overbroad in time and scope;

- (c) it seeks information that is confidential, proprietary and a trade secret belonging to Ameriquest;
- (d) it is vague, ambiguous, and unintelligible;
- (e) a response would cause Ameriquest undue expense, burden and oppression; and
- (f) it is vague, uncertain, and ambiguous;

Based on the foregoing objections, Ameriquest will not produce any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 43: Produce all documents relating to Ameriquest's purchase of consumer leads from third party lead generators that relate to the decoy names and/or decoy phone numbers below which were used by Plaintiff:

"Decoy" Lead Name	Location	Phone #	Appx. Date
Maren Eliason	Norman, OK	unknown	July '03
Gregory Annapolis	St Louis, MO	314-779-0134	July '03
Roger Griffith	Norman, OK	405-253-4058	Oct. '03
Martin Wilkinson	Atlanta, GA	mwilkins@wilburnet.com	Dec. '03
Ron Bartles	St Louis, MO	314-754-7458	Jan. '04
Jerry Pickering	Moore, OK	405-227-9517	Jan. '04
Clayton Fountain	Los Angeles, CA	213-596-9700	Jan. '04
Shiela Rhodes	Oklahoma City, OK	405-227-9517	April '04
Frederick Fremont	Mt. Pleasant, SC	843-972-0294	June '04
Zachariah Winkle	Dallas, TX	214-269-1166	June '04
Jake Sparks	W. Blomfield, MI	248-724-1711	July '04
Randi Tatum	Detroit, MI	313-347-2719	July '04
Leroy Crockett	Houston, TX	713-474-1417	Aug. '04
Robbie Phipps	Denver, CO	303-785-1755	Sep. '04
Cleo Benitez	Dallas, TX	214-269-1258	Dec. '04
Maribel Bacon	Newark, NJ	212-400-7514	Dec. '04
Pace O'Dell	Terrell, TX	972-210-0223	Jan '05
Taylor Askew	Dallas, TX	214-699-0104	Jan. '05
Golda Coleman	Kansas City, KS	913-378-0311	Apr. '05
Wendell Slater	Dallas, TX	214-329-1776	Apr. '05

RESPONSE TO REQUEST FOR PRODUCTION NO. 43: Ameriquest incorporates by reference its Preliminary Statement and General Objections as though set forth in full here, and further objects to this request on the following grounds:

- (a) it seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence;
- (b) it seeks information that is confidential, proprietary and a trade secret belonging to Ameriquest;
- (c) it may seek information that is subject to a constitutional right of privacy;

- (d) it is vague, ambiguous and uncertain;
- (e) it may seek information which is protected from disclosure by the attorney client privilege and attorney work product doctrine; and
- (f) it is overbroad.

Notwithstanding and without waiving the foregoing objections, Ameriquest responds as follows: Ameriquest will not produce responsive documents until Plaintiff has provided Ameriquest with information regarding the veracity and background of these alleged “decoys.” If these “decoys” are individuals, their information is protected by privacy rights and Ameriquest cannot disclose it as a matter of law.

Ameriquest will produce responsive documents relative to Plaintiff and any aliases, i.e. fictitious persons, subject to Plaintiff’s showing that these are fictitious persons.

Request for Production Nos. 41 through 44 and Interrogatory No. 13 request information about decoys created by Robert Braver for the purpose of tracking the senders of mortgage spam transmitted to or through his server facilities. Mr. Braver has provided an affidavit to Ameriquest identifying each of the decoys he created by name, location, and telephone number. (See Exhibit “2,” Affidavit of Robert Braver). Ameriquest has refused to produce the requested information and documents based upon an alleged privacy concern. Ameriquest recently provided the identity of a number of lead generators who it claims provided leads related to the decoys, but failed to fully respond to the requested discovery.

WHEREFORE, premises considered, Plaintiff respectfully requests that this Court enter an Order compelling Defendant Ameriquest Mortgage Company, to respond fully and completely to Plaintiffs’ First Set of Discovery and for attorney fees, costs and any and all other further relief that this Court may deem just and proper.

Respectfully submitted,

s/ Luke J. Wallace

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2005, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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 s/ Luke J. Wallace