

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

ROBERT H. BRAVER, an individual,

Plaintiff,

v.

AMERIQUEST MORTGAGE
COMPANY, INC. dba AMERIQUEST
MORTGAGE CORPORATION, INC. its
AGENTS, EMPLOYEES, and ASSIGNS;
et al

Defendants.

CASE NO. CIV-04-1013-W

**DECLARATION OF JENNIFER EGAN IN SUPPORT OF DEFENDANT
AMERIQUEST'S MORTGAGE COMPANY'S OPPOSITION TO PLAINTIFF ROBERT
BRAVER'S MOTION TO COMPEL DISCOVERY**

I, Jennifer Egan, hereby declare:

1. I am the Internet Marketing Manager for Defendant Ameriqurest Mortgage Company ("Ameriqurest"). As the Internet Marketing Manager, I am familiar with various aspects of Ameriqurest's marketing, including Ameriqurest's sales lead generation activities and the purchase of sales leads from independent third party lead generators. Except where otherwise indicated, the following facts are true of my own personal knowledge or from my review of the files and records of Ameriqurest, and if called upon to do so, I could and would competently testify to the truth thereof.

2. In my capacity as Manager of Internet Marketing, I am one of the custodians of the records and files of Ameriqurest, including those documents that pertain to internet marketing, sales lead generation, and third party lead generators. I state that the records and documents

referred to in this Declaration constitute writings taken or made in the regular or ordinary course of business of Ameriquest at or near the time of the act, condition or event to which they relate by persons employed by Ameriquest who had a business duty to Ameriquest to accurately and completely take, make and maintain such records and documents.

3. Ameriquest is a retail mortgage lender with approximately 270 retail offices nationwide. Ameriquest does not generate mortgage business by e-mail solicitation itself. As part of its marketing efforts, Ameriquest purchases customer leads from companies which independently generate these leads through a variety of ways, one of which is e-mail solicitation. Ameriquest purchases these leads pursuant to lead purchase agreements entered into between Ameriquest and the third party lead generators. The older versions of the lead purchase agreements expressly required the lead generator to comply with all applicable state and federal laws and regulations, including federal and state laws regulating commercial e-mail solicitations. With the advent of the federal CAN-Spam Act and state anti-spam legislation, the more recent lead purchase agreements were revised to set forth the specific requirements of the CAN-Spam Act and explicitly prohibit lead generators from violating it or any other applicable anti-spam legislation. In both the older and more recent lead purchase agreements, the lead generator is required to indemnify Ameriquest for any violations of such laws.

4. Ameriquest does not instruct or direct lead generators to send e-mails, it simply contracts with these companies to purchase leads, which these companies generate regardless and independent of Ameriquest. The lead generators are not agents or employees of Ameriquest and do not send out e-mails or advertise on Ameriquest's behalf. Rather, these companies place advertisements and/or send out generic e-mails inquiring whether recipients are interested in obtaining a mortgage loan. Typically, the email solicitations contain a link by which the

recipient may respond to the lead generator and/or a lead generator's subvendor. A recipient who is interested in a mortgage loan can provide the lead generator (or its subvendor) with relevant information regarding the recipient's address, phone number, email address and other information that pertains to the recipient's mortgage needs. If the lead generator receives a response from the recipient, the lead generator independently determines which of its lender clients may be an appropriate user of the lead. If Ameriquest is offered a lead to purchase from a lead generator, it may or may not purchase the lead, depending on whether it meets certain criteria of Ameriquest. Often, the contractor from whom Ameriquest purchases the leads relies on other companies to generate such leads. In such cases, the contractors are, in actuality, lead accumulators.

5. In or around August 2003, Plaintiff Robert Braver ("Braver") telephoned myself and others at Ameriquest reporting that he had supplied information in response to e-mails which he contended violated the law. Braver reported that he linked these e-mails with telephone calls from Ameriquest. In response to Braver's complaint, Ameriquest placed a block on the purchase of any leads with Braver's name, e-mail addresses, or telephone numbers that it knew of but, of course, could not stop third parties from sending e-mails through Braver's server. There is no way for Ameriquest to detect whether it is purchasing leads with other fake names and information supplied by Braver.

6. I have been informed that the e-mails produced by Braver thus far do not identify Ameriquest and instead contain generic messages. Ameriquest did not instruct these e-mails to be sent and had no arrangement with a third party lead generator to send any of these e-mails exclusively on its behalf. Indeed, Ameriquest is only one of hundreds, perhaps even thousands, of potential purchasers of the leads generated from the subject e-mails.

7. The documents requested by Braver relating to Ameriquest's marketing program and its purchase of sales leads, including but not limited to documents relating to methods of tracking and/or evaluating sales leads, Ameriquest's financial statements, financial records budgets, and financial projections, contain highly confidential and proprietary information, the disclosure of which would cause clearly defined and serious injury to Ameriquest. Ameriquest originates mortgage loans to the public in a highly competitive market in which mortgage lenders compete for customers and where the identity of existing and potential borrowers is the essential and primary source of revenue. Ameriquest obtains customers mainly through extensive marketing and lead generation activities and takes every precaution to preserve and maintain the confidentiality of its marketing plans and strategies and its lead generation activities in order to protect both the customer's privacy interests and Ameriquest's revenue source. Furthermore, certain of these documents, and particularly documents relating to sales leads, contain confidential borrower information that Ameriquest cannot disclose to the public.

8. Many of Braver's document requests to Ameriquest, and particularly the broad requests for documents relating to the purchase of sales leads, e-mail marketing, and internet marketing, would require Ameriquest to search its approximately 270 retail offices nationwide for responsive documents. This would be an enormous burden to Ameriquest and would take, at a minimum, many months to complete. The categories of information requested are so broad that Ameriquest cannot even understand what they encompass nor accurately estimate the time, expense, and labor involved in a search for the records.

9. Ameriquest does not receive information from third party lead generators about whether a lead was generated by e-mail, versus another method. Ameriquest therefore has no financial records relating specifically to sales leads generated by e-mail solicitations.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 3rd day of October, 2005.


JENNIFER EGAN

CERTIFICATE OF SERVICE

This is to certify that on this 3rd day of October, 2005, I electronically transmitted the attached document, **DECLARATION OF JENNIFER EGAN IN SUPPORT OF DEFENDANT AMERIQUEST'S MORTGAGE COMPANY'S OPPOSITION TO PLAINTIFF ROBERT BRAVER'S MOTION TO COMPEL DISCOVERY** to the Clerk of Court using the ECF system for filing the transmittal of a Notice of Electronic Filing to the following registrants:

SEE ATTACHED LIST

Dated: October 3, 2005

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