

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

ROBERT H. BRAVER, an individual,)
Plaintiff,)

vs.)

Case No. CIV-04-1013-W

AMERIQUEST MORTGAGE COMPANY,)
a Delaware corporation, et al,)

Defendants.)

AMERIQUEST MORTGAGE)
COMPANY, a Delaware corporation,)
Cross-Complainant,)

vs.)

INNOVATIVE MARKETING, INC. d/b/a)
LEAD EXTREME, a Washington)
Corporation, et al,)

Cross-Defendants.)

**AFFIDAVIT OF MICHAEL NITTOLI, PRESIDENT OF
LEAD ASSOCIATION CORPRORATION**

STATE OF CALIFORNIA)

COUNTY OF San Diego)

ss

I, Michael Nittoli, of San Diego, California, of lawful age, and after having been first duly sworn deposes and states as follows:

1. I am the President of Lead Association, Inc., a California Corporation with its principal place of business in San Diego, California ("LAI").

2. LAI was named as a Defendant in the Second Amended Complaint (the "Complaint") in the above matter filed by Plaintiff, Robert H. Braver ("Plaintiff").

3. LAI is a marketing company that, among other things, buys and sells data, including mortgage leads, from other marketing companies, which LAI then sells to other



mortgage lead vendors or mortgage brokers, like Ameriquest Mortgage Company (“Ameriquest”).

4. LAI also generates its own mortgage leads through the use of websites and search engine optimization techniques, which LAI then sells to other mortgage lead vendors or mortgage brokers, like Ameriquest.

5. LAI does not use unsolicited mass email marketing, also known as “spam,” to generate mortgage leads, and LAI’s internet marketing program requires a consumer user to take an affirmative step to request further information before receiving an email.

6. LAI attempts to ensure that companies from which it purchases mortgage (and other) leads comply with all applicable laws, rules and regulations regarding spam.

7. LAI requires its vendors to sign a contract in which that vendor represents and warrants that such lead information was lawfully acquired pursuant to all applicable laws, rules and regulations regarding spam.

8. LAI does not have contracts with any mortgage lead vendors with a principal place of business in Oklahoma.

9. LAI does not have contracts with any mortgage brokers with a principal place of business in Oklahoma.

10. LAI has never solicited a consumer within the state of Oklahoma.

11. LAI has never worked with a mortgage broker with a principal place of business in Oklahoma.

12. LAI has never maintained offices in the state of Oklahoma.

13. LAI has never maintained any telephone or facsimile numbers in Oklahoma.

14. LAI is not licensed to do business in the state of Oklahoma.

15. LAI is not a California Corporation domesticated in the state of Oklahoma.

16. LAI has never advertised in any Oklahoma newspapers or magazines.

17. LAI has never employed any Oklahoma based employees.

18. LAI does not have any Oklahoma based stock-holders who own an equity interest in LAI.

19. LAI does not own or lease property in the state of Oklahoma.

20. None of LAI's employees have traveled to Oklahoma on business.

21. Until receiving a copy of the Complaint, I had never heard of Plaintiff. I have read the Complaint which alleges in paragraph 28 that the identity of LAI was provided to Plaintiff by Ameriquest, as a lead generator who provided Ameriquest with a lead(s) that later turned out to be the result of a "decoy" submitted by Plaintiff.

22. Based on the above allegation, I directed that LAI conduct a thorough internal and external investigation, including contacting Ameriquest.

23. Ameriquest provided LAI with the names of three (3) individuals, Cleo Denitez, Golda Coleman, and Taylor Askew, that Ameriquest alleges generated the response to the "decoy" submitted by Plaintiff (the "Alleged Spam Leads").

24. LAI's internal investigation and conversations with Ameriquest revealed that LAI purchased the Alleged Spam Leads (except for Taylor Askew, which LAI was unable to locate) from a mortgage lead vendor and then subsequently sold these mortgage leads to Ameriquest.

25. At no time did LAI attempt to communicate by email, telephone, facsimile, or otherwise, with Plaintiff using the contact information from the Alleged Spam Leads.

26. After discovery of the above information Sean Colclough, a principal of LAI, contacted Plaintiff and attempted to explain the circumstances (the "Colclough Phone Call").


27. Outside of the Colclough Phone Call, at no time has LAI communicated with the Plaintiff by email, telephone or advertisement, and never requested information from Plaintiff, or provided any information to Plaintiff personally, through his email or any server belonging to him.

28. LAI is a completely separate entity from Ameriquest. It is not owned or controlled by Ameriquest and is not affiliated in any way with Ameriquest.

29. The sale of the Alleged Spam Leads from LAI to Ameriquest was an arm's length transaction under a contract with Ameriquest that has since expired. LAI does not receive any commission or consideration of any kind from any loan that Ameriquest may generate as a result of LAI's marketing services. After the sale of the Alleged Spam Leads to Ameriquest, LAI has no further contact with Ameriquest, and never had contact with the "persons" (Plaintiff's decoys) in the Alleged Spam Leads.

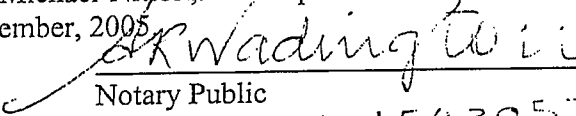
31. The purchase of the Alleged Spam Leads by LAI from the a mortgage lead vendor was an arm's length transaction under a vendor contract in which the vendor represents and warrants that the mortgage leads it sold to LAI were lawfully acquired pursuant to all applicable laws, rules and regulations regarding spam.

This Affidavit is dated this 3 day of November, 2005.



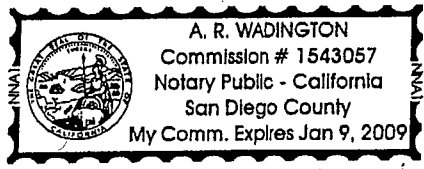
Michael Nitton, President
LAI Association, Corp.

Subscribed and sworn to by Michael Nitton, in the presence of the undersigned
Notary Public this 3rd day of November, 2005.



Notary Public
Commission Number: 1543057
Commission Expires: Jan 9th 2009

(Seal)



see Attached

CALIFORNIA JURAT WITH AFFIANT STATEMENT

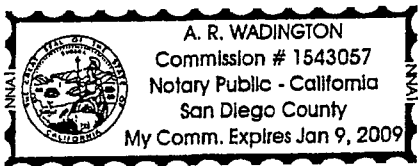
State of California }
County of San Diego } ss.

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

[Signature]
Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before me on this
3rd day of November, 2005, by
Date Month Year
(1) MICHAEL VINCENT NITTOLE
Name of Signer



- Personally known to me
 - Proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (,)
- (and)
(2) _____
Name of Signer

- Personally known to me
- Proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

[Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: AFFIDAVIT OF MICHAEL NITTOLE
Document Date: 11.03.05 Number of Pages: 5
Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here