

**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. )

**ANSWER TO THIRD AMENDED PETITION AND COUNTERCLAIMS**

Defendant Lead Association, Inc., named in the style as Lead Association Corp. (“LAI”), for its Answer to the Third Amended Complaint (the “Complaint”), states as follows:

**Introduction**

1. To the extent any allegations of paragraph 1 of the Complaint apply to LAI, LAI denies the allegations contained therein.

2. LAI is without sufficient information to either admit or deny the allegations of paragraph 2 of the Complaint, and the same are therefore denied.

3. LAI is without sufficient information to either admit or deny the allegations of paragraph 3 of the Complaint, and the same are therefore denied.

4. Paragraph 4 does not make an allegation but makes a statement. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph four of the Complaint, and the same are therefore denied.

5. Paragraph 5 does not make an allegation but makes a statement. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 5 of the Complaint, and the same are therefore denied.

6. Paragraph 6 does not make an allegation but makes a statement. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 6 of the Complaint, and the same are therefore denied.

7. Paragraph 7 does not make an allegation but makes a statement. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 7 of the Complaint, and the same are therefore denied.

8. Paragraph 8 does not make an allegation but makes a statement. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 8 of the Complaint, and the same are therefore denied.

9. Paragraph 9 does not make an allegation but makes a statement. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to

either admit or deny the allegations of paragraph 9 of the Complaint, and the same are therefore denied.

10. Paragraph 10 does not make an allegation but makes a statement. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 10 of the Complaint, and the same are therefore denied.

11. Paragraph 11 does not make an allegation but makes a statement. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 11 of the Complaint, and the same are therefore denied.

12. Paragraph 12 does not make an allegation but makes a statement. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 12 of the Complaint, and the same are therefore denied.

13. To the extent any allegations of paragraph 13 of the Complaint apply to LAI, LAI denies the allegations contained therein.

#### **Jurisdiction and Venue**

14. LAI re-alleges and incorporates its responses to paragraphs 1 through 13, inclusive.

15. LAI denies the allegations of paragraph 15 of the Complaint.

16. LAI is without sufficient information to either admit or deny the allegations of paragraph 16 of the Complaint, and the same are therefore denied.

17. LAI is without sufficient information to either admit or deny the allegations of paragraph 17 of the Complaint, and the same are therefore denied.

18. To the extent any allegations of paragraph 18 of the Complaint apply to LAI, LAI denies the allegations contained therein.

19. To the extent any allegations of paragraph 19 of the Complaint apply to LAI, LAI denies the allegations contained therein.

20. To the extent any allegations of paragraph 20 of the Complaint apply to LAI, LAI denies the allegations contained therein.

21. To the extent any allegations of paragraph 21 of the Complaint apply to LAI, LAI denies the allegations contained therein.

22. To the extent any allegations of paragraph 13 of the Complaint apply to LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 22 of the Complaint, and the same are therefore denied.

23. To the extent any allegations of paragraph 23 of the Complaint apply to LAI, LAI denies the allegations contained therein.

24. To the extent any allegations of paragraph 24 of the Complaint apply to LAI, LAI denies the allegations contained therein.

25. To the extent any allegations of paragraph 25 of the Complaint apply to LAI, LAI denies the allegations contained therein.

26. To the extent any allegations of paragraph 26 of the Complaint apply to LAI, LAI denies the allegations contained therein.

27. To the extent any allegations of paragraph 27 of the Complaint apply to LAI, LAI denies the allegations contained therein.

28. To the extent any allegations of paragraph 28 of the Complaint apply to LAI, LAI denies the allegations contained therein.

29. To the extent any allegations of paragraph 29 of the Complaint apply to LAI, LAI denies the allegations contained therein.

30. To the extent any allegations of paragraph 30 of the Complaint apply to LAI, LAI denies the allegations contained therein.

31. Paragraph 31 does not make an allegation but makes a statement. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 31 of the Complaint, and the same are therefore denied.

32. To the extent any allegations of paragraph 32 of the Complaint apply to LAI, LAI denies the allegations contained therein.

33. To the extent any allegations of paragraph 33 of the Complaint apply to LAI, LAI denies the allegations contained therein.

#### **The Parties**

34. LAI re-alleges and incorporates its responses to paragraphs 1 through 33, inclusive.

35. LAI is without sufficient information to either admit or deny the allegations of paragraph 35 of the Complaint, and the same are therefore denied.

36. LAI is without sufficient information to either admit or deny the allegations of paragraph 36 of the Complaint, and the same are therefore denied.

37. LAI is without sufficient information to either admit or deny the allegations of paragraph 37 of the Complaint, and the same are therefore denied.

38. LAI is without sufficient information to either admit or deny the allegations of paragraph 38 of the Complaint, and the same are therefore denied.

39. LAI is without sufficient information to either admit or deny the allegations of paragraph 39 of the Complaint, and the same are therefore denied.

40. LAI is without sufficient information to either admit or deny the allegations of paragraph 40 of the Complaint, and the same are therefore denied.

41. LAI admits the allegation of paragraph 41 that LAI is a California Corporation with its principal place of business in San Diego, California.

42. LAI is without sufficient information to either admit or deny the allegations of paragraph 42 of the Complaint, and the same are therefore denied.

43. LAI is without sufficient information to either admit or deny the allegations of paragraph 43 of the Complaint, and the same are therefore denied.

44. LAI is without sufficient information to either admit or deny the allegations of paragraph 44 of the Complaint, and the same are therefore denied.

45. LAI is without sufficient information to either admit or deny the allegations of paragraph 45 of the Complaint, and the same are therefore denied.

46. LAI is without sufficient information to either admit or deny the allegations of paragraph 46 of the Complaint, and the same are therefore denied.

47. LAI is without sufficient information to either admit or deny the allegations of paragraph 47 of the Complaint, and the same are therefore denied.

48. LAI is without sufficient information to either admit or deny the allegations of paragraph 48 of the Complaint, and the same are therefore denied.

49. LAI is without sufficient information to either admit or deny the allegations of paragraph 49 of the Complaint, and the same are therefore denied.

50. LAI is without sufficient information to either admit or deny the allegations of paragraph 50 of the Complaint, and the same are therefore denied.

51. LAI is without sufficient information to either admit or deny the allegations of paragraph 51 of the Complaint, and the same are therefore denied.

52. LAI is without sufficient information to either admit or deny the allegations of paragraph 52 of the Complaint, and the same are therefore denied.

53. LAI is without sufficient information to either admit or deny the allegations of paragraph 53 of the Complaint, and the same are therefore denied.

54. LAI is without sufficient information to either admit or deny the allegations of paragraph 54 of the Complaint, and the same are therefore denied.

55. LAI is without sufficient information to either admit or deny the allegations of paragraph 55 of the Complaint, and the same are therefore denied.

56. LAI is without sufficient information to either admit or deny the allegations of paragraph 56 of the Complaint, and the same are therefore denied.

57. LAI is without sufficient information to either admit or deny the allegations of paragraph 57 of the Complaint, and the same are therefore denied.

58. LAI is without sufficient information to either admit or deny the allegations of paragraph 58 of the Complaint, and the same are therefore denied.

59. LAI is without sufficient information to either admit or deny the allegations of paragraph 59 of the Complaint, and the same are therefore denied.

60. LAI is without sufficient information to either admit or deny the allegations of paragraph 60 of the Complaint, and the same are therefore denied.

61. LAI is without sufficient information to either admit or deny the allegations of paragraph 61 of the Complaint, and the same are therefore denied.

62. LAI is without sufficient information to either admit or deny the allegations of paragraph 62 of the Complaint, and the same are therefore denied.

63. Paragraph 63 does not make an allegation but makes a statement. To the extent any allegations of paragraph 63 of the Complaint apply to LAI, LAI denies the allegations contained therein.

64. To the extent any allegations of paragraph 64 of the Complaint apply to LAI, LAI denies the allegations contained therein.

#### **The Plaintiff's Server Facilities and Operations**

65. LAI re-alleges and incorporates its responses to paragraphs 1 through 64, inclusive.

66. LAI is without sufficient information to either admit or deny the allegations of paragraph 66 of the Complaint, and the same are therefore denied.

67. Paragraph 67 does not make an allegation but makes a statement. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 67 of the Complaint, and the same are therefore denied.

#### **Defendant's Unlawful Conduct**

68. LAI re-alleges and incorporates its responses to paragraphs 1 through 67, inclusive.

69. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 69 of the Complaint, and the same are therefore denied.

70. Paragraph 70 does not make an allegation but makes a statement. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 70 of the Complaint, and the same are therefore denied.

71. Paragraph 71 does not make an allegation but makes a statement. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 71 of the Complaint, and the same are therefore denied.

72. Paragraph 72 does not make an allegation but makes a statement. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 72 of the Complaint, and the same are therefore denied.

73. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 73 of the Complaint, and the same are therefore denied.

74. To the extent any allegations of paragraph 74 of the Complaint apply to LAI, LAI denies the allegations contained therein.

75. LAI admits the allegation of paragraph 75 to the extent that LAI denies that it knew the leads it purchased and sold were generated by spam. To the extent the rest of the allegations of paragraph 75 of the Complaint apply to LAI, LAI denies the allegations contained therein.

76. LAI is without sufficient information to either admit or deny the allegations of paragraph 76 of the Complaint, and the same are therefore denied.

77. To the extent any allegations of paragraph 77 of the Complaint apply to LAI, LAI denies the allegations contained therein.

78. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 78 of the Complaint, and the same are therefore denied.

79. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 79 of the Complaint, and the same are therefore denied.

80. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 80 of the Complaint, and the same are therefore denied.

81. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 81 of the Complaint, and the same are therefore denied.

82. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 82 of the Complaint, and the same are therefore denied.

83. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 83 of the Complaint, and the same are therefore denied.

84. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 84 of the Complaint, and the same are therefore denied.

85. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 85 of the Complaint, and the same are therefore denied.

86. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 86 of the Complaint, and the same are therefore denied.

87. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 87 of the Complaint, and the same are therefore denied.

88. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 88 of the Complaint, and the same are therefore denied.

89. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 89 of the Complaint, and the same are therefore denied.

90. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 90 of the Complaint, and the same are therefore denied.

91. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 91 of the Complaint, and the same are therefore denied.

92. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 92 of the Complaint, and the same are therefore denied.

93. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 93 of the Complaint, and the same are therefore denied.

94. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 94 of the Complaint, and the same are therefore denied.

95. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 95 of the Complaint, and the same are therefore denied.

96. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 96 of the Complaint, and the same are therefore denied.

97. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 97 of the Complaint, and the same are therefore denied.

98. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 98 of the Complaint, and the same are therefore denied.

99. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 99 of the Complaint, and the same are therefore denied.

100. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 100 of the Complaint, and the same are therefore denied.

101. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 101 of the Complaint, and the same are therefore denied.

102. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 102 of the Complaint, and the same are therefore denied.

103. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 103 of the Complaint, and the same are therefore denied.

104. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 104 of the Complaint, and the same are therefore denied.

105. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 105 of the Complaint, and the same are therefore denied.

106. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 106 of the Complaint, and the same are therefore denied.

107. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 107 of the Complaint, and the same are therefore denied.

108. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 108 of the Complaint, and the same are therefore denied.

109. Lead Association admits selling the “Cleo Benitez” lead to Ameriquest.

110. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 110 of the Complaint, and the same are therefore denied.

111. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 111 of the Complaint, and the same are therefore denied.

112. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 112 of the Complaint, and the same are therefore denied.

113. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 113 of the Complaint, and the same are therefore denied.

114. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 114 of the Complaint, and the same are therefore denied.

115. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 115 of the Complaint, and the same are therefore denied.

116. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 115 of the Complaint, and the same are therefore denied.

117. Lead Association admits selling the “Golda Coleman” lead to Ameriquest.

118. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 118 of the Complaint, and the same are therefore denied.

119. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 119 of the Complaint, and the same are therefore denied.

120. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 120 of the Complaint, and the same are therefore denied.

121. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 121 of the Complaint, and the same are therefore denied.

122. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 122 of the Complaint, and the same are therefore denied.

123. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 123 of the Complaint, and the same are therefore denied.

124. To the extent this paragraph is deemed to be an allegation against LAI, LAI is without sufficient information to either admit or deny the allegations of paragraph 124 of the Complaint, and the same are therefore denied.

**COUNT I – CAN SPAM VIOLATIONS (15 U.S.C. §7704(A)(1))**

125. LAI re-alleges and incorporates its responses to paragraphs 1 through 124, inclusive.

126. To the extent any allegations of paragraph 126 of the Complaint apply to LAI, LAI denies the allegations contained therein.

127. To the extent any allegations of paragraph 127 of the Complaint apply to LAI, LAI denies the allegations contained therein.

128. To the extent any allegations of paragraph 128 of the Complaint apply to LAI, LAI denies the allegations contained therein.

129. To the extent any allegations of paragraph 129 of the Complaint apply to LAI, LAI denies the allegations contained therein.

130. To the extent any allegations of paragraph 130 of the Complaint apply to LAI, LAI denies the allegations contained therein.

**COUNT II – CAN SPAM ACT (15 U.S.C. §7704(A)(2,3 and 5))**

131. LAI re-alleges and incorporates its responses to paragraphs 1 through 130, inclusive.

132. To the extent any allegations of paragraph 132 of the Complaint apply to LAI, LAI denies the allegations contained therein.

133. To the extent any allegations of paragraph 133 of the Complaint apply to LAI, LAI denies the allegations contained therein.

134. To the extent any allegations of paragraph 134 of the Complaint apply to LAI, LAI denies the allegations contained therein.

135. To the extent any allegations of paragraph 135 of the Complaint apply to LAI, LAI denies the allegations contained therein.

**COUNT III – VIOLATIONS OF THE OKLAHOMA FRAUDULENT USE OF ELECTRONIC MAIL STATUTES (15 O.S. §§776.1 – 776.4)**

136. LAI re-alleges and incorporates its responses to paragraphs 1 through 135, inclusive.

137. To the extent any allegations of paragraph 137 of the Complaint apply to LAI, LAI denies the allegations contained therein.

138. To the extent any allegations of paragraph 138 of the Complaint apply to LAI, LAI denies the allegations contained therein.

139. To the extent any allegations of paragraph 139 of the Complaint apply to LAI, LAI denies the allegations contained therein.

**COUNT IV – VIOLATIONS OF THE OKLAHOMA UNSOLICITED COMMERCIAL ELECTRONIC MAIL STATUTES (15 O.S. §§776.5 – 776.7)**

140. LAI re-alleges and incorporates its responses to paragraphs 1 through 139, inclusive.

141. To the extent any allegations of paragraph 141 of the Complaint apply to LAI, LAI denies the allegations contained therein.

142. To the extent any allegations of paragraph 142 of the Complaint apply to LAI, LAI denies the allegations contained therein.

143. To the extent any allegations of paragraph 143 of the Complaint apply to LAI, LAI denies the allegations contained therein.

144. To the extent any allegations of paragraph 144 of the Complaint apply to LAI, LAI denies the allegations contained therein.

**COUNT V – CIVIL CONSPIRACY**

145. LAI re-alleges and incorporates its responses to paragraphs 1 through 144, inclusive.

146. To the extent any allegations of paragraph 146 of the Complaint apply to LAI, LAI denies the allegations contained therein.

147. To the extent any allegations of paragraph 147 of the Complaint apply to LAI, LAI denies the allegations contained therein.

147. There are two paragraphs 147. To the extent any allegations of the second paragraph 147 of the Complaint apply to LAI, LAI denies the allegations contained therein.

148. To the extent any allegations of paragraph 148 of the Complaint apply to LAI, LAI denies the allegations contained therein.

149. To the extent any allegations of paragraph 149 of the Complaint apply to LAI, LAI denies the allegations contained therein.

150. To the extent any allegations of paragraph 150 of the Complaint apply to LAI, LAI denies the allegations contained therein.

151. Any allegation of the Complaint not expressly admitted above is denied.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiff has failed to state a claim against LAI upon which relief may be granted.
2. Plaintiff's state law claims against LAI under the Oklahoma Fraudulent Use of Electronic Mail Statutes, 15 O.S. §§776.1 – 776.4, are precluded by the Oklahoma Unsolicited Commercial Electronic Mail Statutes, 15 O.S. §§776.5 – 776.7.
3. Plaintiff's state law claims against LAI under the Oklahoma Unsolicited Commercial Electronic Mail Statutes, 15, O.S. §§776.5 – 776.7 fail as a matter of law because that statutory scheme does not provide for secondary liability.
4. Plaintiff's state law claims against LAI under the Oklahoma Fraudulent Use of Electronic Mail Statutes, 15 O.S. §§776.1 – 776.4, and the Oklahoma Unsolicited Commercial Electronic Mail Statutes, 15 O.S. §§776.5 – 776.7, are pre-empted by the CANSPAM ACT, 15 U.S.C. §7701, et seq., specifically, 15 U.S.C. §7707(b) (1).
5. Plaintiff's claims are barred by the doctrine of unclean hands.

6. Any acts or omissions of LAI giving rise to Plaintiff's claims are the result of innocent mistake despite reasonable procedures employed by LAI in the purchase and sale of mortgage leads.

7. LAI established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent violations of the CAN SPAM ACT, 15 U.S.C. §7701, et seq., the Oklahoma Fraudulent Use of Electronic Mail Statutes, 15 O.S. §§776.1 – 776.4, and the Oklahoma Unsolicited Commercial Electronic Mail Statutes, 15 O.S. §§776.5 – 776.7.

8. Without admitting any liability, if there were violations of the CAN SPAM ACT, 15 U.S.C. §7701, et seq., the Oklahoma Fraudulent Use of Electronic Mail Statutes, 15 O.S. §§776.1 – 776.4, and the Oklahoma Unsolicited Commercial Electronic Mail Statutes, 15 O.S. §§776.5 – 776.7, those violations occurred despite commercially reasonable efforts to maintain compliance with the practices and procedures as set forth in Affirmative Defense No. 7.

9. LAI lacks the minimum contacts with the state of Oklahoma for this Court to exercise personal jurisdiction over LAI.

10. Plaintiff has not suffered any compensable injury as a result of alleged actions of LAI, and as a result, is not entitled to an award against LAI.

11. The alleged violations of law, and injuries incurred by the Plaintiff, were the result of the conduct of third parties over which LAI has no control.

12. Plaintiff's claims are barred, in whole or in part, because LAI was at all times acting within the realm of legitimate business transactions.

13. Plaintiff's claims are barred because LAI acted lawfully in the purchase and sale of the mortgage leads.

14. The Oklahoma Fraudulent Use of Electronic Mail Statutes, 15 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.

15. Any harm alleged by Plaintiff could be attributed to several causes, and the damages for this harm, if any, should apportioned among the various causes according to the contribution of each cause to the harm sustained.

16. Any purported act or omission on the part of LAI was excused by the actions of the Plaintiff.

17. The damages claimed by Plaintiff are speculative.

18. LAI acted in accordance with its responsibilities under all applicable laws and did not engage in willful and/or conscious conduct that would subject LAI to liability or damages to Plaintiff.

19. Plaintiff's damages were caused, in whole or part, by non-parties whom Plaintiff has failed to join in this action.

20. Without admitting that any damages were suffered by Plaintiff, if damages were suffered by Plaintiff as alleged in the Complaint, those damages were proximately caused by and/or contributed to by entities or persons other than LAI. The liability of all defendants or responsible parties, named or unnamed, should be apportioned according to the relative degrees of fault, and the liability of LAI should be reduced accordingly.

21. The acts and/or omissions alleged by Plaintiff in the Complaint were committed by independent third parties for which LAI has no responsibility.

22. Plaintiff's alleged statutory damages are so grossly disproportionate to any actual damages, if any, suffered by Plaintiff as to constitute a deprivation of property without due process of law.

23. 15 O.S. §776.2(C), and 15 O.S. §776.7(C), providing for statutory damages of \$25,000 per day is unconstitutionally vague as drafted and as applied.

24. LAI presently had insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. LAI reserves the right to assert further affirmative defenses in the event that discovery indicates that additional defenses are appropriate.

WHEREFORE, Defendant, Lead Association, Inc. named in the style as Lead Association Corp., prays this Court enter judgment as follows:

(A) That Plaintiff takes nothing by way of the Third Amended Complaint and that judgment be entered in favor of Lead Association, Inc. and against Plaintiff on those claims;

(B) That LAI be awarded its expenses and costs, including attorney's fees to the extent allowed by law, and

(C) That this Court grant LAI such other and further relief as to which LAI may be entitled.

### **COUNTERCLAIMS**

Defendant Lead Association, Inc., named in the style of this matter as Lead Association Corp. ("LAI"), for its counterclaims against Plaintiff Robert H. Braver ("Braver"), alleges and states as follows:

1. The counterclaims against Braver arise out of transactions or occurrences that are the subject matter of Braver's claims. The Court has supplemental jurisdiction over the counterclaims. 28 U.S.C § 1367.

2. LAI as a marketing company bought and sold data, including mortgage leads, from other marketing companies, which LAI then sold to other mortgage lead vendors or mortgage brokers, like Ameriquest Mortgage Company ("Ameriquest").

3. LAI attempts to ensure that companies from which it purchases mortgage (and other) leads are good legitimate leads. These attempts include telephone calls to ensure the accuracy of information provided in leads which it purchases.

4. Based on information and belief, LAI purchased and sold leads that included leads generated by emails from Braver. Based on information and belief, these emails from Braver were in response to emails Braver or others received and which responses by Braver included false information provided by Braver with the knowledge or belief that his false information would likely be utilized in the mortgage lead business. *Exhibits 1 and 2, Docket #292. See also, Third Amended Complaint, ¶¶ 108, 109, 116-119, Docket #245.* Based on information and belief, these were transmissions identified in Braver affidavits filed in this matter as being made under the fictitious names of Cleo Denitez and Golda Coleman. *Exhibits 1 and 2, Docket #292. See also, Third Amended Complaint, ¶¶ 108, 109, 116-119, Docket #245.* Based on information and belief, in response to a telephone call or telephone calls to Braver to verify the accuracy of information provided by Braver by email transmissions by Braver, Braver again provided false information.

5. Based on information and belief, leads that were sold by LAI to Ameriquest included leads that were generated as a result of false information provided by Braver. *Exhibits*

1, and 2, Docket #292. See also, *Third Amended Complaint*, ¶¶ 108, 109, 116-119, Docket #245.

6. Based on information and belief, Braver contacted Ameriquest and told Ameriquest that mortgage leads it had acquired were fraudulent emails with forged headers and in violation of various laws. *Exhibit 2, Docket#292*. Based on information and belief, Braver told Ameriquest that it should cease doing business with a company engaging in these practices. *Exhibit 2, Docket #292*. Based on information and belief, in communications with Ameriquest, Braver specifically identified leads sold to Ameriquest by LAI as being leads acquired by fraudulent emails with forged headers and in violation of various laws. *Third Amended Complaint, ¶120, Docket#245*. Based on information and belief, Braver, in his communications with Ameriquest, intimated that LAI was a company that acquired mortgage leads through the transmission of fraudulent emails with forged headers and in violation of various laws. *Third Amended Complaint, ¶120, Docket#245*.

7. Ameriquest did not renew its contract with LAI. Based on information and belief, the contacts by Braver with Ameriquest and assertions made by Braver to Ameriquest concerning LAI were a reason that the LAI contract with Ameriquest was not renewed.

8. As a result of Braver's actions, LAI has suffered damages in excess of \$1,000,000.00.

9. Braver actions were in reckless disregard for the rights of LAI. Based on such reckless disregard, LAI is entitled to an award of punitive damages.

#### **COUNT I: FRAUD AND CONSTRUCTIVE FRAUD**

10. The allegations set forth in paragraphs 1-9 of the Counterclaim are re-asserted and incorporated by reference.

11. Braver acted with the intention that LAI rely on the false information presented in the mortgage leads as true, and such information was relied upon as being true.

12. Braver's actions constituted fraud and constructive fraud.

13. As a result of Braver's actions, LAI suffered damages as asserted.

#### **COUNT II: NEGLIGENCE**

14. The allegations set forth in paragraphs 1-9 of the Counterclaim are re-asserted and incorporated by reference.

15. Braver owed a duty to LAI to not provide false information that he had reason to know or believed would be used in a commercial transaction.

16. Braver breached his duty to not provide false information that he had reason to know or believed would be used in a commercial transaction.

17. As a result of Braver's actions, LAI suffered damages as asserted.

#### **COUNT III: INTERFERENCE WITH CONTRACTUAL RELATIONS**

18. The allegations set forth in paragraphs 1-9 of the Counterclaim are re-asserted and incorporated by reference.

19. Braver's actions constituted a tortious interference with LAI's contractual relations with Ameriquest.

20. As a result of Braver's actions, LAI suffered damages as asserted.

#### **COUNT IV: VIOLATION OF OKLAHOMA LAW AND NEGLIGENCE PER SE**

21. The allegations set forth in paragraphs 1-9 of the Counterclaim are re-asserted and incorporated by reference.

22. Braver's Cleo Denitez and Golda Coleman electronic mail transmissions contained false and misleading information.

23. Braver's Cleo Denitez and Golda Coleman electronic mail transmissions negligently injured LAI.

24. Braver's Cleo Denitez and Golda Coleman electronic mail transmissions violated the provisions of 15 O.S. § 776.1.A.3.

25. Braver's Cleo Denitez and Golda Coleman electronic mail transmissions constituted negligence per se.

26. LAI is entitled to recover damages as allowed by 15 O.S. § 776.2.

WHEREFORE, premises considered, LAI prays that judgment be entered in its favor and against Braver for its damages incurred, for punitive damages, for its costs, for attorney's fees as allowed by statute, and for such other and further relief to which it may be entitled.

Respectfully submitted,

s/Arthur F. Hoge III

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ATTORNEYS FOR DEFENDANT LEAD  
ASSOCIATION, INC.

**JURY TRIAL DEMANDED**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of November, 2006, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing. Based on the electronic records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Steven J. Adams  
Joseph Leventhal  
*Attorneys for Go Apply, Inc.*

Robert A. Nance  
Terry D. Kordeliski  
Kalley R. Aman  
Michael J. Cereseto  
*Attorneys for Ameriquest Mortgage Co.*

David Humphreys  
Michael R. McKee  
Luke J. Wallace  
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*Attorneys for Robert H. Braver*

Marie S. Johnston  
Phillip L. Free, Jr.  
*Attorneys for Innovative Marketing, Inc.*

Patrick P. Gunn  
*Attorney for Go Apply, Inc.*

Courtney Tuong Vi Nguyen  
*Attorney for The Loan Page, Inc.*

I served the attached document by U.S. Mail, postage pre-paid, on the following:

Mr. Nick Hetcher  
N830 Pond Rd.  
Marinette, WI 54143

s/Arthur F. Hoge