

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

ROBERT H. BRAVER, an individual,)
)
Plaintiff,)
)
v.)
)
AMERIQUEST MORTGAGE COMPANY, a)
Delaware corporation, et al)
)
Defendants.)

Case No. CIV-04-1013-W

AMERIQUEST MORTGAGE)
COMPANY, a Delaware corporation,)
)
Cross-Complainant,)
)
v.)
)
INNOVATIVE MARKETING, INC. dba)
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.)

JOINT STATUS REPORT AND DISCOVERY PLAN

Date of Conference: April 4, 2007.

Appearing for Plaintiff: David Humphreys, OBA #12346
Luke J. Wallace, OBA #16070
Humphreys Wallace Humphreys, P.C.
9202 S. Toledo Avenue
Tulsa, Oklahoma 74137
(918) 747-5300; (918) 747-5311 Facsimile
david@hwh-law.com;
luke@hwh-law.com;

Michael R. McKee, OBA # 6018
McKee Law Firm
Post Office Box 1351
Norman, Oklahoma 73070
(405) 360-2322; (405) 366-6416 Facsimile
mike@mckeelawfirm.com

Appearing for Defendants: Kalley R. Aman
Michael J. Cereseto
Buchalter Nemer Fields & Younger
1000 Wilshire Blvd., Suite 1500
Los Angeles, CA 90017
Kaman@buchalter.com
mcereseto@buchalter.com
Attorneys for the Defendant Ameriquest

Terry D. Kordeliski
Robert A. Nance
Riggs Abney Neal Turpen Orbison Lewis
5801 North Broadway Ave., Suite 101
Oklahoma City, OK 73118
TKordeliski@RiggsAbney.com
rnance@riggsabney.com
Attorneys for the Defendant Ameriquest

Phillip L. Free, Jr.
Marie S. Johnston
Crowe & Dunlevy, P.C.
20 North Broadway, Suite 1800
Oklahoma City, OK 73102
phil.free@crowedunlevy.com
johnstom@crowedunlevy.com
*Attorneys for Defendant/Cross-Defendant,
Innovative Marketing, Inc. d/b/a Lead Extreme*

Patrick Gunn
Courtney Nguyen
Cooley Godward Kronish, LLP
101 California Street, 5th Floor
San Francisco, California, 94111
pgunn@cooley.com
cnguyen@cooley.com
*Attorneys for Defendants Stecroft Holdings, Inc.
and The Loan Page, Inc.*

Joseph Leventhal
Cooley Godward Kronish, LLP
4401 Eastgate Mall
San Diego, California, 92121
jleventhal@cooley.com
*Attorneys for Defendants Stecroft Holdings, Inc.
and The Loan Page, Inc.*

Arthur F. Hoge III
Christopher W. Cotner
Mee, Mee & Hoge, PLLP
50 Penn Place
1900 NW Expressway, Suite 1400
Oklahoma City, OK 73118
afhoge@meehoge.com
cwc@meehoge.com
Attorneys for Defendant Lead Association, Inc.

Steven J. Adams
John D. Russell
Fellers, Snider, Blankenship, Bailey & Tippens, P.C.
321 South Boston Avenue, Suite 800
Tulsa, Oklahoma 74103-3318
sadams@fellerssnider.com
jrussell@fellerssnider.com
*Attorneys for Defendants Stecroft Holdings, Inc.
and The Loan Page, Inc.*

Nick Hetcher
N830 Pond Rd.
Marinette, WI 54143
Pro se
**Although provided notice, Mr. Hetcher did not participate in the
conference call on March 21, 2007 at 10:00 a.m. regarding the
Joint Status Report and Discovery Plan.*

JURY TRIAL DEMANDED X NONJURY TRIAL _____

1. BRIEF PRELIMINARY STATEMENT. State briefly and in ordinary language the facts and positions of the parties to inform the judge of the general nature of the case.

Plaintiff is a provider of internet access service and electronic mail. Plaintiff's servers have been inundated with mortgage spam sent by leads generated on behalf of Defendants in violation of state and federal laws.

Statement for Defendant Innovative Marketing, Inc. d/b/a Lead Extreme ("Lead Extreme"):

Defendant Lead Extreme denies liability under both the CAN-SPAM Act and the Oklahoma spam statutes. Furthermore, Lead Extreme denies that Plaintiff is a legitimate internet access or electronic mail service provider that has been damaged by any of the acts complained of in this case.

Statement for Defendant Ameriquest Mortgage Company (“Ameriquest”):

Ameriquest joins in the Statement for Lead Extreme above. Additionally, Ameriquest does not market borrowers through direct electronic mail solicitations. As part of its marketing activities, Ameriquest did from time to time purchase leads which were independently generated by third party contractors (“lead generators”). The lead generators did not send emails on Ameriquest’s behalf. Rather, they (and/or subvendors working on their behalf) sent out generic emails inquiring whether recipients were interested in obtaining a mortgage loan. If the lead generator received a response (typically on the lead generator’s website), the lead generator independently determined which of its lender clients may be an appropriate user of the lead. As such, Ameriquest is not liable for any alleged violations of state or federal law in connection with any emails which may be the subject of this action, i.e., any of the allegedly offensive emails were sent by independent contractors and not on Ameriquest’s behalf.

Ameriquest purchased customer leads pursuant to lead purchase agreements entered into between Ameriquest and lead generators. These lead purchase agreements require the lead generator to comply with all applicable state and federal laws and regulations, and further require that the lead generator defend and indemnify Ameriquest for any violation of such laws. Ameriquest does not condone spamming or any internet solicitations which would be violative of the law.

To the extent that there is a finding in this case that any of the subject emails violated state and/or federal law, the lead generators are solely responsible for such liability and are subject to express indemnity agreements with Ameriquest.

Further, on November 17, 2006, the Fourth Circuit Court of Appeals in *Omega World Travel v. Mummagraphics*, 469 F.3d 348 (4th Cir. 2006) held that plaintiff’s claims under Oklahoma state law, which are virtually identical to Mr. Braver’s claims in this lawsuit, are preempted by the Federal Can Spam Act and not actionable under the Federal Act.

Statement for Defendants Stecroft Holdings, Inc. (“Stecroft”) and The Loan Page, Inc. (“TLP”):

Defendants Stecroft and TLP join in the other defendants’ statements and indicate that they do not engage in e-mail marketing but, rather, generate leads through websites and by purchasing such leads from third parties. Further, both Stecroft and TLP rely on the industry’s tools for verifying leads it purchases and leads are not generated by illegal spam.

Statement for Defendant, Lead Association, Inc. ("LAI"):

Defendant, LAI joins in the Statement for Lead Extreme above, and with the other Defendants and denies liability under both the CAN-SPAM Act and the Oklahoma spam statutes and further denies that Plaintiff is a legitimate internet access or electronic mail service provider or has been damaged by any of the acts complained of in this case. Also, LAI does not generate its own leads but rather purchases those leads from other lead generators and has taken commercially reasonable steps to ensure that the leads it purchases are not the product of spam.

2. JURISDICTION. The basis on which the jurisdiction of the Court is invoked.

The jurisdiction of this Court is invoked as the relief sought is based upon Federal question and diversity of citizenship.

3. STIPULATED FACTS. List stipulations as to all facts that are not disputed or reasonably disputable, including jurisdictional facts.

- a. This claim for relief is brought under the federal CAN-SPAM Act of 2003, 15 U.S.C. § 7701 et seq ("CAN-SPAM Act"), Title 15, Oklahoma Statutes, §§ 776.1 – 776.4, Fraudulent Use of Electronic Mail, and Title 15, Oklahoma Statutes, §§ 776.5 – 776.7, Unsolicited Commercial Electronic Mail.
- b. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367.
- c. Defendant Innovative Marketing, Inc., d/b/a Lead Extreme is a Washington corporation with its principal place of business in Kirkland, Washington.
- d. This Court has personal jurisdiction over Defendant Ameriquest Mortgage Company.
- e. This Court has personal jurisdiction over Defendant Innovative Marketing, Inc. d/b/a Lead Extreme.
- f. This Court has personal jurisdiction over Defendant Nick Hetcher.

4. LEGAL ISSUES. State separately, and by party, each disputed legal issue and the authority relied upon.

A. Plaintiff

1. All Defendants – Violation of the CAN-SPAM ACT; 15 U.S.C. § 7704(A)(1),(2), (3) and (5).
2. All Defendants – Violation of the Oklahoma Fraudulent Use of Electronic Mail Statutes; 15 O.S. §§ 776.1 – 776.4
3. All Defendants – Violation of the Unsolicited Commercial Electronic Mail Statutes; 15 O.S. §§ 776.5 – 776.7
4. Civil Conspiracy
5. Whether an agency relationship between and amongst the Defendants existed, common law.
6. Whether Defendants ratified the activities of other Defendants and third parties, common law.
7. Plaintiff's statutory and aggravated damages against all Defendants.
8. With respect to the claims by Lead Association, whether Lead Association has failed to state a claim against Plaintiff.
9. Whether Plaintiff committed fraud, actual or constructive, against Lead Association.
10. Whether Plaintiff committed negligence.
11. Whether Plaintiff interfered with Lead Association's contractual relations.
12. Whether Plaintiff committed any violations of 15 O.S. § 776.1.A.3/negligence per se.
13. Whether Lead Association's damages, if any, were caused as a direct result of Plaintiff's actions.
14. Whether Lead Association's claims against Plaintiff are barred by the doctrine of uncleaned hands.
15. Lead Association has not suffered any compensable injury as a result of the alleged actions of Plaintiff and is not entitled to an award against the Plaintiff.
16. The alleged violations of law, and injuries incurred by Lead Association, were the result of conduct of itself or other third parties over which Plaintiff has no control.

B. Defendant Lead Extreme:

1. Whether Lead Extreme violated the CAN-SPAM ACT; 15 U.S.C. § 7704(a)(1), 2, 3 and 5.
2. Whether Lead Extreme violated the Oklahoma Fraudulent Use of Electronic Mail Statutes; 15 O.S. §§ 776.1 – 776.4.
3. Whether Lead Extreme violated the Unsolicited Commercial Electronic Mail Statutes; 15 O.S. §§ 776.5 – 776.7.
4. Whether the Oklahoma Fraudulent Use of Electronic Mail Statutes; 15 O.S. §§ 776.1 – 776.4, and the Unsolicited Commercial Electronic Mail Statutes; 15 O.S. §§ 776.5 – 776.7, violate the Dormant Commerce Clause of the United States Constitution.
5. Whether Plaintiff was damaged as a result of the alleged violations of the CAN-SPAM Act, the Oklahoma Fraudulent Use of Electronic Mail statute, and the Unsolicited Commercial Electronic Mail statute.
6. Whether Plaintiff is an electronic mail service provider under the Oklahoma Fraudulent Use of Electronic Mail and Unsolicited Commercial Electronic Mail statutes or a provider of internet access service under the CAN-SPAM Act.
7. Whether any portion of the Oklahoma Fraudulent Use of Electronic Mail Statutes; 15 O.S. §§ 776.1 – 776.4, and the Unsolicited Commercial Electronic Mail Statutes; 15

O.S. §§ 776.5 – 776.7 are preempted by the federal CAN-SPAM Act.

8. Whether Plaintiff is barred from recovery by reason of unclean hands.
9. Whether Plaintiff consented and/or acquiesced to the acts alleged in the Third Amended Complaint.
10. Whether Plaintiff is estopped from asserting the claims raised in the Third Amended Complaint.
11. Whether Plaintiff has failed to mitigate his alleged injuries.

C. Defendant Ameriquest Mortgage Company:

1. Whether any of the Defendant or Cross-Defendant lead generators violated the CAN-SPAM ACT; 15 U.S.C. § 7704(a)(1), 2, 3 and 5.
2. Whether any of the Defendant or Cross-Defendant lead generators violated the Oklahoma Fraudulent Use of Electronic Mail Statutes; 15. O.S. §§ 776.1 – 776.4.
3. Whether any of the Defendant or Cross-Defendant lead generators violated the Unsolicited Commercial Electronic Mail Statutes; 15 O.S. §§ 776.5 – 776.7.
4. Whether Ameriquest has vicariously liability for any alleged violations of the state or federal acts by the lead generators. If so, is Ameriquest owed a duty of defense and indemnity from any lead generator who violated the law?
5. Whether Ameriquest has direct liability for any alleged violations of the state or federal acts by the lead generators.
6. Whether Plaintiff was damaged as a result of the alleged violations of the state or federal acts.
7. Whether Plaintiff is an electronic mail service provider under the Oklahoma Fraudulent Use of Electronic Mail and Unsolicited Commercial Electronic Mail statutes or a provider of internet access service under the CAN-SPAM Act.
8. Whether the Oklahoma Fraudulent Use of Electronic Mail Statutes; 15. O.S. §§ 776.1 – 776.4, and the Unsolicited Commercial Electronic Mail Statutes; 15 O.S. §§ 776.5 – 776.7, violate the United States Constitution.
9. Whether any portion of the Oklahoma Fraudulent Use of Electronic Mail Statutes; 15. O.S. §§ 776.1 – 776.4, and the Unsolicited Commercial Electronic Mail Statutes; 15 O.S. §§ 776.5 – 776.7 are preempted by the federal CAN-SPAM Act.

D. Defendants Stecroft and TLP:

1. Whether Stecroft or TLP violated the CAN-SPAM ACT; 15 U.S.C. § 7704(a)(1), 2, 3 and 5.
2. Whether Stecroft or TLP violated the Oklahoma Fraudulent Use of Electronic Mail Statutes; 15. O.S. §§ 776.1 – 776.4.
3. Whether Stecroft or TLP violated the Unsolicited Commercial Electronic Mail Statutes; 15 O.S. §§ 776.5 – 776.7.
4. Whether Stecroft or TLP has vicarious liability for any alleged violations of the state or federal acts by other lead generators.
5. Whether Plaintiff was damaged as a result of the alleged violations of the state or federal acts.

6. Whether Plaintiff is an electronic mail service provider under the Oklahoma Fraudulent Use of Electronic Mail and Unsolicited Commercial Electronic Mail statutes or a provider of internet access service under the CAN-SPAM Act.
7. Whether the Oklahoma Fraudulent Use of Electronic Mail Statutes; 15. O.S. §§ 776.1 – 776.4, and the Unsolicited Commercial Electronic Mail Statutes; 15 O.S. §§ 776.5 – 776.7, violate the United States Constitution.
8. Whether any portion of the Oklahoma Fraudulent Use of Electronic Mail Statutes; 15. O.S. §§ 776.1 – 776.4, and the Unsolicited Commercial Electronic Mail Statutes; 15 O.S. §§ 776.5 – 776.7 are preempted by the federal CAN-SPAM Act.
9. Whether plaintiff maintains this litigation against Stecroft and/or TLP without a sufficient basis for doing so.

E. Defendant LAI:

1. Whether LAI violated the CAN-SPAM ACT; 15 U.S.C. § 7704(a)(1), 2, 3 and 5.
2. Whether LAI violated the Oklahoma Fraudulent Use of Electronic Mail Statutes; 15. O.S. §§ 776.1 – 776.4.
3. Whether LAI violated the Unsolicited Commercial Electronic Mail Statutes; 15 O.S. §§ 776.5 – 776.7.
4. Plaintiff has failed to state a claim against LAI upon which relief may be granted.
5. 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.
6. 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.
7. 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).
8. Plaintiff's claims are barred by the doctrine of unclean hands.
9. 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.
10. 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.
11. 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.

12. LAI lacks the minimum contacts with the state of Oklahoma for this Court to exercise personal jurisdiction over LAI.
13. 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.
14. 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.
15. Plaintiff's claims are barred, in whole or in part, because LAI was at all times acting within the realm of legitimate business transactions.
16. Plaintiff's claims are barred because LAI acted lawfully in the purchase and sale of the mortgage leads.
17. 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.
18. Any harm alleged by Plaintiff could be attributed to several causes, and the damages for this harm, if any, should be apportioned among the various causes according to the contribution of each cause to the harm sustained.
19. Any purported act or omission on the part of LAI was excused by the actions of the Plaintiff.
20. The damages claimed by Plaintiff are speculative.
21. 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.
22. Plaintiff's damages were caused, in whole or part, by non-parties whom Plaintiff has failed to join in this action.
23. 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.
24. The acts and/or omissions alleged by Plaintiff in the Complaint were committed by independent third parties for which LAI has no responsibility.
25. 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.
26. 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.

5. CONTENTIONS AND CLAIMS FOR DAMAGES OR OTHER RELIEF SOUGHT.

A. Plaintiff

1. Plaintiff v. all defendants for Violation of the CAN-SPAM ACT.
2. Plaintiff v. all defendants for Violation of the Oklahoma Fraudulent Use of Electronic Mail Statutes.

3. Plaintiff v. all defendants for Violation of the Unsolicited Commercial Electronic Mail Statutes.
4. Temporary and permanent injunctive relief against defendants, and that defendants, their officers, agents, representatives, servants, employees, contractors, successors and assignees, and all others in active concert or participation with defendants, be enjoined and restrained from continuing to violate the CAN-SPAM Act of 2003 and the Oklahoma Fraudulent Use of Electronic Mail and Unsolicited Commercial Electronic Mail statutes.
5. Statutory damages, including aggravated damages.
6. Attorney's fees and costs.
7. Such other or additional relief as is just and proper.
8. With respect to Lead Association's claim against Plaintiff, Plaintiff contends he did not commit fraud, constructive fraud, negligence, interference with contractual relations or any violation of 15 O.S. § 776.1.a.3/negligence per se.

B. Defendant Innovative Marketing, Inc. d/b/a Lead Extreme:

1. Lead Extreme contends that it did not violate the CAN-SPAM Act.
2. Lead Extreme contends that it did not violate the Oklahoma Fraudulent Use of Electronic Mail Statute.
3. Lead Extreme contends that it did not violate the Unsolicited Commercial Electronic Mail Statute.
4. Lead Extreme contends that the Oklahoma Fraudulent Use of Electronic Mail and the Unsolicited Commercial Electronic Mail statutes violate the Dormant Commerce Clause of the United States Constitution.
5. Lead Extreme contends that Plaintiff was not damaged by any of the alleged violations.
6. Lead Extreme contends that Plaintiff is not an electronic mail service provider under the Oklahoma Fraudulent Use of Electronic Mail and Unsolicited Commercial Electronic Mail statutes, and is not a provider of internet access service under the CAN-SPAM Act.

C. Defendant Ameriquest Mortgage Company

1. Ameriquest did not violate the federal CAN-SPAM Act, the Oklahoma Fraudulent Use of Electronic Mail Statute, or the Oklahoma's Unsolicited Commercial Electronic Mail Statute.
2. To the extent that Ameriquest has any vicarious liability for alleged violations of the federal or state acts, the lead generators who sent the allegedly offensive emails have a duty to defend and indemnify Ameriquest for those violations.
3. Ameriquest contends that the Oklahoma Fraudulent Use of Electronic Mail and the Unsolicited Commercial Electronic Mail statutes violate the Dormant Commerce Clause of the United States Constitution.
4. Ameriquest contends that Plaintiff was not damaged by any of the alleged violations.
5. Ameriquest contends that Plaintiff is not an electronic mail service provider under the Oklahoma Fraudulent Use of Electronic Mail and Unsolicited Commercial Electronic Mail statutes, and is not a provider of internet access service under the CAN-SPAM Act.

D. Defendants Stecroft and TLP

1. Stecroft and TLP did not violate the federal CAN-SPAM Act, the Oklahoma Fraudulent Use of Electronic Mail Statute, or the Oklahoma's Unsolicited Commercial Electronic Mail Statute.
2. Attorney's fees and costs against Plaintiff under the CAN-SPAM Act.
3. Stecroft and TLP contend that the Oklahoma Fraudulent Use of Electronic Mail and the Unsolicited Commercial Electronic Mail statutes violate the Dormant Commerce Clause of the United States Constitution.
4. Stecroft and TLP contend that Plaintiff was not damaged by any of the alleged violations.
5. Stecroft and TLP contend that Plaintiff is not an electronic mail service provider under the Oklahoma Fraudulent Use of Electronic Mail and Unsolicited Commercial Electronic Mail statutes, and is not a provider of internet access service under the CAN-SPAM Act.

E. Defendant LAI

1. Fraud and Constructive Fraud by Plaintiff.
 2. Negligence by Plaintiff.
 3. Interference with Contractual Relations by Plaintiff.
 4. Violation of 15 O.S. § 776.1.A.3/ Negligence Per Se by Plaintiff.
 5. Damages in excess of one million dollars.
 6. Attorneys fees and costs against Plaintiff under the CAN-SPAM Act.
 7. LAI contends that the Oklahoma Fraudulent Use of Electronic Mail and the Unsolicited Commercial Electronic Mail statutes violate the Dormant Commerce Clause of the United States Constitution.
 8. LAI contends that Plaintiff was not damaged by any of the alleged violations.
 9. LAI contends that Plaintiff is not an electronic mail service provider under the Oklahoma Fraudulent Use of Electronic Mail and Unsolicited Commercial Electronic Mail statutes, and is not a provider of internet access service under the CAN-SPAM Act.
6. MOTIONS PENDING AND/OR ANTICIPATED (including date of filing, relief requested, and date responsive brief to be filed).

Plaintiff anticipates filing motions for default against the following Defendants which have been served but which have not filed responsive pleadings:

1. Defendant Abacus Enterprises
2. Defendant Avalon Trading Company
3. Defendant DotCom Marketing Group, Inc.
4. Defendant The Lead Source
5. Defendant Liberty Lead Source, Inc.

Plaintiff anticipates filing a motion for summary judgment once sufficient discovery has been completed.

Ameriquist anticipates filing a motion for judgment on the pleadings and/or a motion for

summary judgment once sufficient discovery has been completed.

Defendants Stecroft and TLP anticipate filing a motion for judgment on the pleadings and/or a motion for summary judgment once sufficient discovery has been completed. Stecroft and TLP anticipate filing a motion for attorney's fees and costs upon conclusion of the litigation against them.

Defendant LAI anticipates filing a motion for summary judgment on the following issues:

- a. 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.
- b. 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.
- c. 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).

Defendant LAI further anticipates filing a general motion for summary judgment once sufficient discovery has been completed.

Defendant Innovative Marketing, Inc. d/b/a Lead Extreme anticipates filing a motion for summary judgment.

7. EXHIBITS.

A. Plaintiff

No.	Title/Description	Objection	Federal Rule of Evidence Relied Upon
1.	Documents identifying lead generators.		
2.	Documents related to authorization and approval of each lead generation contract.		
3.	Lead generation contracts.		
4.	Internal records related to the use of electronic mail and internet marketing to generate sales leads.	Irrelevant, Overbroad, Attorney-Client Privilege and/or Attorney Work Product.	
5.	All documents related to the purchase of sales leads generated by internet marketing or	Irrelevant, Overbroad, Attorney-Client Privilege and/or Attorney Work	

	electronic mail.	Product.	
6.	Guidelines, policies and procedures, and other documents related to due diligence and/or investigation before, during and after entering into lead generation contracts.	Vague and ambiguous and uncertain.	
7.	Defendant's financial statement, budgets, projections and other documents representing the cost or profitability of sales leads generated from electronic mail or internet marketing.	Irrelevant, Overbroad, Right of Privacy.	
8.	Lawsuits, complaints, petitions concerning fraudulent electronic mail or Defendant's purchase of sales leads generated by electronic mail or internet marketing.	Irrelevant, Overbroad, Attorney-Client Privilege and/or Attorney Work Product.	
9.	All correspondence, electronic mail, complaints or criticisms relating to fraudulent electronic mail or sales leads generated by internet marketing or electronic mail.	Irrelevant, Overbroad, Attorney-Client Privilege and/or Attorney Work Product.	
10.	Records related to payments by Defendant for leads.		
11.	Documents related to the number of sales leads purchased.	Irrelevant, Overbroad, Attorney-Client Privilege and/or Attorney Work Product.	
12.	Documents related to conversation rate or other methods used to track or evaluate the quality and quantity of leads purchased, sales and advertising used by lead generators and Ameriquest.	Irrelevant	
13.	Documents related to subject spam, landing pages, identity of spammers and relationship to Defendants.	Uncertain, vague, ambiguous and unintelligible.	
14.	All communications between lead generators, affiliates and Defendants.		
15.	Other documents and items		

	identified during the course of discovery.		
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B. Defendant Lead Extreme:

No.	Title/Description	Objection	Federal Rule of Evidence Relied Upon
1.	Ameriquest Mortgage Company Lead Purchase Agreement between Ameriquest Mortgage Company and Lead Extreme.		
2.	Email(s) allegedly sent by Lead Extreme.		
3.	Responses and replies to the emails which are and/or will be the subject of this action.		
4.	Damages documents		
5.	Documents relating to income and profits earned, and expenses paid, by Plaintiff engaging in the business of internet service provider and/or an electronic mail service provider.		
6.	Documents relating to Plaintiff's business operations as an internet or electronic mail service provider, including, but not limited to, documents relating to the scope and extent of services provided by Plaintiff to alleged clients.		
7.	Documents relating to Plaintiff's servers, including, but not limited to, the type, location, and size of such servers.		
8.	Documents related to the aliases used by Plaintiff.		
9.	All lawsuits filed by Plaintiff as an internet or electronic mail service provider.		
10.	Documents relating to the identity of each of Plaintiff's clients for alleged business of providing internet and/or electronic mail services.		
11.	Documents relating to the		

	identity of each of Plaintiff's clients, if any, who received any one of the emails which is now, or will be, the subject of this action.		
12.	Any exhibits listed by any other party and not objected to by Lead Extreme.		
13.	Other documents and items identified during the course of discovery.		

C. Defendant Ameriquest:

No.	Title/Description	Objection	Federal Rule of Evidence Relied Upon
1.	The emails which are and/or will be the subject of this action, including electronic versions of such emails and/or any other documents which demonstrate that such emails were transmitted through Plaintiff's servers.		
2.	Responses and replies to the emails which are and/or will be the subject of this action.		
3.	Lead purchase agreements with Defendant and Cross-Defendant lead generators.		
4.	Documents relating to income and profits earned, and expenses paid, by Plaintiff engaging in the business of internet service provider and/or an electronic mail service provider.	Relevance.	
5.	Documents relating to Plaintiff's business operations as an internet or electronic mail service provider, including, but not limited to, documents relating to the scope and extent of services provided by Plaintiff to alleged clients.	Relevance.	
6.	Documents relating to Plaintiff's servers, including, but not limited to, the type, location, and size of	Relevance.	

	such servers.		
7.	Documents related to the aliases used by Plaintiff.		
8.	All lawsuits filed by Plaintiff as an internet or electronic mail service provider.	Relevance.	
9.	Documents relating to the identity of each of Plaintiff's clients for alleged business of providing internet and/or electronic mail services.	Relevance.	
10.	Documents relating to the identity of each of Plaintiff's clients, if any, who received any one of the emails which is now, or will be, the subject of this action.		

D. Defendant, LAI

No.	Title/Description	Objection	Federal Rule of Evidence Relied Upon
1.	The emails which are and/or will be the subject of this action, including electronic versions of such emails and/or any other documents which demonstrate that such emails were transmitted through Plaintiff's servers.		
2.	Responses and replies to the emails which are and/or will be the subject of this action.		
3.	Amerquest Mortgage Company Lead Purchase Agreement between Amerquest Mortgage Company and LAI.		
4.	Any exhibits listed by any other party and not objected to by LAI.	Relevance.	
5.	Other documents and items identified during the course of discovery.	Relevance.	
6.	Third Amended Complaint		
7.	Exhibits 1 and 2 attached to documents at Docket #292		
8.	Plaintiff's answer to LAI Counterclaims		

LAI expressly reserves the right to identify and/or use additional exhibits to support its claims as such exhibits become known to LAI during the course of this litigation and also expressly reserves the right to utilize any exhibit that has been, or will be identified by Plaintiff or any other Defendant or Cross-Defendant.

8. WITNESSES.

A. Plaintiff:

NAME	ADDRESS	SUBJECT OF INFORMATION
Robert Braver	c/o Humphreys Wallace Humphreys, P.C. 9202 S. Toledo Avenue Tulsa, OK 74137	Mr. Braver is the owner of internet server facilities located in Norman, Oklahoma and was damaged by the spam generated by Defendants which is at issue. It is anticipated that Mr. Braver has knowledge of the emails sent by or on behalf of Defendants and his damages.
Will Heaton, Jason (last name unknown), Corporate Representative of Innovative Marketing, Inc., d/b/a Lead Extreme	c/o Phillip L. Free, Jr. Marie S. Johnston Crowe & Dunlevy, P.C. 20 North Broadway, Suite 1800 Oklahoma City, OK 73102	Employee of Defendant Lead Extreme. Testimony will include policies and procedures, employee training, all personal knowledge of this matter, lead generated contracts, knowledge of spam emails used to generate leads, notice, communications with other Defendants and Plaintiff.
Jennifer Egan, Heather Brunton, Rick Davies, Heidi (last name unknown), C. Abbey Abuka, Ron (last name unknown) Ameriquest Dallas office, Muhammad (last name unknown) Ameriquest Rutherford, NJ office, Mike [Tom/Tong?] (last name unknown) Ameriquest	c/o Kalley R. Aman Michael J. Cereseto Buchalter Nemer Fields & Younger 601 Figueroa Street Suite 2400 Los Angeles, CA 90017 - and - Terry D. Kordeliski Robert A. Nance Riggs Abney Neal Turpen Orbison Lewis 5801 North Broadway Suite 101 Oklahoma City, OK 73118	Employees of Defendant Ameriquest. Testimony will include policies and procedures, employee training, all personal knowledge of this matter, lead generated contracts, knowledge of spam emails used to generate leads, notice, communications with other Defendants and Plaintiff.

NAME	ADDRESS	SUBJECT OF INFORMATION
<p>Dallas office,</p> <p>Gonzalo (last name unknown) Ameriquest Dallas office,</p> <p>Kevin (last name unknown) Ameriquest Novi, Michigan office,</p> <p>Virginia (last name unknown) Ameriquest Dallas office,</p> <p>Richard Fitzgerald, Ameriquest Dunwoody, GA office,</p> <p>Sean Doane, Ameriquest St. Charles, Missouri office,</p> <p>Corporate Representative of Ameriquest Mortgage Company</p>		
<p>Tim Bancroft,</p> <p>Lindsay G. Hale,</p> <p>Andre Stecki,</p> <p>Corporate Representative of Go Apply, Inc. d/b/a eLeadZ</p>	<p>c/o Patrick Gunn Joseph Leventhal Courtney Nguyen Cooley Godward Kronish LLP 4401 Eastgate Mall San Diego, CA 92121</p>	<p>Testimony will include policies and procedures, employee training, all personal knowledge of this matter, lead generated contracts, knowledge of spam emails used to generate leads, notice, communications with other Defendants and Plaintiff.</p>
<p>Sean Fenlon</p> <p>Corporate Representative of The Loan Page, Inc.</p>	<p>c/o Patrick Gunn Joseph Leventhal Courtney Nguyen Cooley Godward Kronish LLP 4401 Eastgate Mall San Diego, CA 92121</p>	<p>Testimony will include policies and procedures, employee training, all personal knowledge of this matter, lead generated contracts, knowledge of spam emails used to generate leads, notice, communications with other Defendants and Plaintiff.</p>
<p>Robert Biggerstaff</p>	<p>P.O. Box 614 Mt. Pleasant, SC</p>	<p>Plaintiff's client; Will testify concerning spam which escaped filters and other procedures put in place by Plaintiff.</p>
<p>Adri-Anne Trammell</p>	<p>521 Bethany Oaks Drive Norman, OK 73071</p>	<p>Plaintiff's client; Will testify concerning spam which escaped filters and other procedures put in place by Plaintiff.</p>

NAME	ADDRESS	SUBJECT OF INFORMATION
David Lewis CDI Solutions	1665 County Road 1380 Chickasha, OK 73018	Plaintiff's client; Will testify concerning spam which escaped filters and other procedures put in place by Plaintiff.
Michael Nittoli, Partner, LAI	c/o Arthur F. Hoge III Christopher W. Cotner Mee, Mee & Hoge, PLLP 50 Penn Place 1900 NW Expressway, Suite 1400 Oklahoma City, OK 73118	Employee of Defendant LAI. Testimony will include policies, procedures, employee training and all personal knowledge of this matter, lead generated contracts, knowledge of spamming, knowledge used to generate leads, notice, communications with other Defendants and Plaintiff, knowledge of its or its affiliates were spamming for leads for pecuniary gain.
Sean Colclough, Partner, LAI	c/o Arthur F. Hoge III Christopher W. Cotner Mee, Mee & Hoge, PLLP 50 Penn Place 1900 NW Expressway, Suite 1400 Oklahoma City, OK 73118	Employee of Defendant LAI. Testimony will include policies, procedures, employee training and all personal knowledge of this matter, lead generated contracts, knowledge of spamming, knowledge used to generate leads, notice, communications with other Defendants and Plaintiff, knowledge of its or its affiliates were spamming for leads for pecuniary gain.
Representatives of International Webworks.com, LLC		Employee of Defendant LAI. Testimony will include policies, procedures, employee training and all personal knowledge of this matter, lead generated contracts, knowledge of spamming, knowledge used to generate leads, notice, communications with other Defendants and Plaintiff, knowledge of its or its affiliates were spamming for leads for pecuniary gain.
Nick Hetcher	N 830 Pond Rd. Marinette, WI 54143	Personal knowledge, spamming activities, relationship with and amongst the other Defendants.
Expert Witness(es) (to be determined)		

B. Defendant Lead Extreme:

NAME	ADDRESS	SUBJECT OF INFORMATION
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NAME	ADDRESS	SUBJECT OF INFORMATION
Steve Lewis, Partner, Innovative Marketing	Lead Extreme 4040 Lake Washington Blvd. Kirkland, WA 98033-7874	Testimony on Lead Extreme's policies and procedures; testimony on emails sent; testimony about lead generation industry.
Jason Guiberson, Partner, Innovative Marketing	Lead Extreme 4040 Lake Washington Blvd. Kirkland, WA 98033-7874	Testimony on Lead Extreme's policies and procedures; testimony on emails sent; general knowledge concerning technical administration of business; testimony about lead generation industry.
Robert Braver	c/o Humphreys Wallace Humphreys, P.C. 9202 S. Toledo Avenue Tulsa, Oklahoma 74137	Testimony on damages, receipt of emails, and contact with defendants; testimony on business as internet and/or email service provider.
Expert Witnesses (to be identified)		Testimony regarding relevant emails, Plaintiff's server and business, lead generation industry, internet and/or email service provider industry, Plaintiff's damages.
Any witnesses identified by any other party and not objected to be Lead Extreme.		
Other witnesses identified during the course of discovery.		

C. Defendant Ameriquest:

NAME	ADDRESS	SUBJECT OF INFORMATION
Robert Braver	c/o Humphreys Wallace Humphreys, P.C. 9202 S. Toledo Avenue Tulsa, Oklahoma 74137	Testimony on business as internet and/or email service provider, litigation history, damages, receipt of emails and responses thereto, and contacts with Cross-Defendants and Defendants.
Jennifer Egan	c/o Buchalter, Nemer, Fields & Younger 601 So. Figueroa, Ste. 2400 Los Angeles, CA 90017	Testimony on Ameriquest's lead purchase program and the fact that the allegedly offending e-mails that are the subject of this action were not sent by Ameriquest. Ms. Egan will also testify about the Lead Purchase Agreements between Ameriquest and Defendants

		and/or Cross-Defendants.
Michele Denton	c/o Buchalter, Nemer, Fields & Younger 601 So. Figueroa, Ste. 2400 Los Angeles, CA 90017	Testimony on Ameriquest's practices and procedures with respect to marketing contacts in connection with purchased leads and specifically Ameriquest's marketing contacts with Plaintiff (and/or others) in connection with purchased leads which are the subject of this action.
Person most knowledgeable for each Defendant and Cross Defendant lead generator.		Testimony on lead purchase agreements with Ameriquest, policies, procedures and practices regarding e-mail solicitations, sale of leads, and communications with Plaintiff and/or others associated with Plaintiff.
Not yet identified clients of Plaintiff		Testimony about Plaintiff's services as internet and/or email service provider, and any contacts with any of the Defendants or Cross-Defendants.
Not yet identified expert witness(es)		Testimony about the subject e-mails, Plaintiff's server, lead generation industry, internet and/or email service provider industry, Plaintiff's damages.

Ameriquest expressly reserves the right to identify and/or use additional witnesses to support its claims as such witnesses become known to Ameriquest during the course of this litigation and also expressly reserves the right to utilize any witness who has been, or will be, identified by Plaintiff or any other Defendant or Cross-Defendant.

D. Defendants Stecroft and TLP:

NAME	ADDRESS	SUBJECT OF INFORMATION
Robert Braver	c/o Humphreys Wallace Humphreys, P.C. 9202 S. Toledo Avenue Tulsa, Oklahoma 74137	Testimony on business as internet and/or email service provider, litigation history, damages, receipt of emails and responses thereto.
Luke Wallace	c/o Humphreys Wallace Humphreys, P.C. 9202 S. Toledo Avenue Tulsa, Oklahoma 74137	Testimony regarding the inquiry conducted prior to filing the complaint and each amended complaint regarding the liability of Stecroft and/or TLP

E. Defendant LAI:

NAME	ADDRESS	SUBJECT OF INFORMATION
Michael Nittoli, Partner, LAI	C/o Arthur F. Hoge, III Mee, Mee & Hoge, PLLP Suite 1400 1900 N.W. Expressway Oklahoma City, Oklahoma 73118	Testimony on LAI's policies and procedures; testimony on how leads are generated and investigation into leads complained of by Plaintiff; general knowledge concerning administration business.
Sean Colclough Partner, LAI	C/o Arthur F. Hoge, III Mee, Mee & Hoge, PLLP Suite 1400 1900 N.W. Expressway Oklahoma City, Oklahoma 73118	Testimony on LAI's policies and procedures; testimony on how leads are generated and investigation into leads complained of by Plaintiff; general knowledge concerning technical administration of business.
Robert Braver	c/o Humphreys Wallace Humphreys, P.C. 9202 S. Toledo Avenue Tulsa, Oklahoma 74137	Testimony on damages, receipt of emails, and contact with defendants.

LAI expressly reserves the right to identify and/or use additional witnesses to support its claims as such witnesses become known to LAI during the course of this litigation and also expressly reserves the right to utilize any witness who has been, or will be, identified by Plaintiff or any other Defendant or Cross-Defendant.

9. COMPLIANCE WITH RULE 26(a)(1). Have the initial disclosures required by Fed.R.Civ.P. 26(a)(1) been made? Yes No.

Parties have stipulated that this Joint Status Report and Discovery Plan can be substituted for Rule 26 disclosures. Plaintiff, Ameriquest and Innovative Marketing previously complied with Rule 26 disclosures and will provide those disclosures to the other defendants.

10. PLAN FOR DISCOVERY:

- a. The discovery planning conference (Fed.R.Civ.P. 26(f) was held on March 21, 2007.
- b. The parties anticipate that discovery should be completed within 6 months, immediately following the settlement conference. If the court sets the settlement hearing within 45 days of the date of the status conference, the parties stipulate discovery will be suspended until conclusion of the settlement conference. If the court sets the settlement hearing 45 days after the status conference or later, then

discovery will commence immediately.

- c. In the event ADR is ordered or agreed to, what is the minimum amount of time necessary to complete necessary discovery prior to the ADR session?

The parties request an immediate ADR session.

- d. Identify any other discovery issues which should be addressed at the scheduling conference, including any limitations on discovery, protective orders needed, or other elements (Fed.R.Civ.P. 26(f) which should be included in a particularized discovery plan.

Discussion of electronic discovery confirmation date to be held following ADR.

11. ESTIMATED TRIAL TIME: For liability undetermined For damages _____

12. BIFURCATION REQUESTED: Yes ___ No ___

Plaintiff requests bifurcation. Ameriquest objects to bifurcation.

13. POSSIBILITY OF SETTLEMENT:
Good _____ Fair X Poor _____

14. SETTLEMENT AND ADR PROCEDURES:

A. Compliance with LCvR16.3(c) ADR discussion: yes X no ___

B. The parties request that this case be referred to the following ADR process:

- Mediation
- Early Neutral Evaluation
- Non-Binding Arbitration
- Other Court-supervised settlement conference
- None - the parties do not request ADR at this time.

(Once a civil case is set on a trial docket, that case will generally be scheduled for a settlement conference before a judge not otherwise assigned to the case. LCvR16.2. The conference is normally scheduled in the month just prior to trial. Requests for an early judicial settlement conference will be granted by the Court only when the prospects for a fruitful settlement conference exist.)

C. Do the parties jointly choose the "Cost Reduction Trial Track?"

- Yes - Written agreement/stipulation is attached or will be submitted no later than _____. (See Exhibit II to Plan for Alternative Dispute Resolution and Settlement Procedures and Rules of Practice, Supplement to Local Rules.)
- No - track not selected.

D. The parties recognize that informal settlement negotiations are appropriate at any time and are encouraged by the Court. Such settlement discussions are required prior to a judicial settlement conference.

15. Parties Consent to Trial by Magistrate Judge. Yes ___ No X
16. Management Plan Requested. Standard _____ Specialized X
(If specialized plan requested, counsel should include a statement of reasons and proposal for management.)

Defendant Lead Extreme requests a specialized management plan during the discovery phase of the case. There will be potentially many defendants (possibly up to 50 John Does), and the emails and actions of these other defendants do not have any impact on Lead Extreme's liability. Participating in discovery for all possible defendants would result in needless cost and effort on the part of Lead Extreme. For instance, Lead Extreme could possibly have to attend many depositions in other states about unrelated emails allegedly sent by unrelated defendants. Therefore, Lead Extreme proposes that the Judge keep the case together for motion practice, but separate the case for discovery purposes. In the Joint Status Conference, Lead Extreme would like to discuss a plan in which a deposition cannot be used against a defendant unless that defendant is specifically noticed that material pertaining to that particular defendant will be discussed in a deposition. In this way, the case is unified for the Judge, but the parties will be saved considerable expense in discovery.

Submitted this 28th day of March, 2007.

s/ Luke Wallace

Luke J. Wallace, OBA #16070
David Humphreys, OBA #12346
Humphreys Wallace Humphreys, P.C.
9202 S. Toledo Avenue
Tulsa, Oklahoma 74137
(918) 747-5300; (918) 747-5311 Facsimile
luke@hwh-law.com
david@hwh-law.com
ATTORNEYS FOR PLAINTIFF

-and-

Michael R. McKee, OBA # 6018
McKee Law Firm
Post Office Box 1351
Norman, Oklahoma 73070
(405) 360-2322; (405) 366-6416 Facsimile
mike@mckeelawfirm.com
ATTORNEYS FOR PLAINTIFF

s/ Kalley R. Aman (Signed by Filing Attorney with permission of Defendants' Attorney)

Kalley R. Aman
Michael J. Cereseto
Buchalter Nemer Fields & Younger
601 Figueroa Street, Suite 2400
Los Angeles, CA 90017
Kaman@buchalter.com
mcereseto@buchalter.com
ATTORNEYS FOR DEFENDANT AMERIQUEST

- and -

Terry D. Kordeliski
Robert A. Nance
Riggs Abney Neal Turpen Orbison Lewis
5801 North Broadway Ave., Suite 101
Oklahoma City, OK 73118
TKordeliski@RiggsAbney.com
rnance@riggsabney.com
ATTORNEYS FOR DEFENDANT AMERIQUEST

s/ Marie S. Johnston (Signed by Filing Attorney with permission of Defendants' Attorney)

Phillip L. Free, Jr.
Marie S. Johnston
Crowe & Dunlevy, P.C.
20 North Broadway, Suite 1800
Oklahoma City, OK 73102
phil.free@crowedunlevy.com
johnstom@crowedunlevy.com
*ATTORNEYS FOR DEFENDANT/CROSS-DEFENDANT
INNOVATIVE MARKETING, INC. d/b/a
LEAD EXTREME*

s/ Patrick Gunn (Signed by Filing Attorney with permission of Defendants' Attorney)

Patrick Gunn, Esq.
Courtney Nguyen, Esq.
Cooley Godward Kronish, LLP
One Maritime Plaza, 20th Floor
San Francisco, California, 94111-3580
*ATTORNEYS FOR DEFENDANTS STECROFT HOLDINGS, INC.
AND THE LOAN PAGE, INC.*

s/ Joseph Leventhal (Signed by Filing Attorney with permission of Defendants' Attorney)

Joseph Leventhal, Esq
Cooley Godward Kronish, LLP
4401 Eastgate Mall
San Diego, California, 92121
*ATTORNEYS FOR DEFENDANTS STECROFT HOLDINGS, INC.
AND THE LOAN PAGE, INC.*

s/ Arthur F. Hoge III (Signed by Filing Attorney with permission of Defendants' Attorney)

Arthur F. Hoge III
Christopher W. Cotner
Mee, Mee & Hoge, PLLP
50 Penn Place
1900 NW Expressway, Suite 1400
Oklahoma City, OK 73118
ATTORNEYS FOR DEFENDANT LEAD ASSOCIATION, INC.