

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT ENNIS, )  
Plaintiff, ) 2:08-cv-01301-GEB-EFG  
v. ) ORDER ON MOTIONS IN LIMINE  
MORTGAGE TREE LENDING, INC., et al.)  
Defendants. )  
\_\_\_\_\_  
)

Defendants Rodney Lowe, Patrick Mize and Robert Draizen and Plaintiff have filed motions in limine seeking to preclude the admission of certain evidence at trial. The parties' motions are addressed in turn below.

## I. Defendants' Motions in Limine

**A. Defendants' Motion in Limine No. 1**

Defendants argue Plaintiff should be precluded from offering evidence, testimony, attorney argument or other comments concerning Plaintiff's assertion that he is owed \$247,115.00 as damages since Plaintiff failed to properly disclose an updated computation of his alleged damages as required by Federal Rules of Civil Procedure 26(a) (1) (A) (iii) and 26(e) (1) (A). Plaintiff responds that he did provide an updated calculation of his damages through an answer to Defendants' special interrogatories.

Federal Rule of Civil Procedure 26(a)(1)(A)(iii) "requires the disclosure of a computation of each category of damages claimed by

1 the disclosing party. Rule 26(e)(1)(A) requires disclosing parties to  
2 supplement their prior disclosures in a timely manner when the prior  
3 response is incomplete or inaccurate." Hoffman v. Construction  
4 Protective Services, Inc., 541 F.3d 1175, 1179 (9th Cir. 2008)  
5 (quoting Fed. R. Civ. P. 26(a)(1)(A)(iii) and 26(e)(1)(A)).

6 Plaintiff's answer to Defendants' special interrogatories  
7 states:

8 SPECIAL INTERROGATORY NO. 9: Please set forth  
9 with particularity the formula YOU intend to use  
10 to support YOUR contention that you are entitled  
11 to any of the proceeds from the ZURICH CLAIM.

12 ANSWER: Plaintiff intends to calculate the  
13 portion of the proceeds that belonged to him as  
14 follows:

15 1. MortgageTree's percentage of the total  
16 claim submitted to Zurich should be  
17 calculated by multiplying the number of  
18 loans on which the claim was based times  
19 a fee of \$1,325 per loan and dividing  
20 the result by the total claim submitted  
21 to Zurich ("MortgageTree's Percentage").  
22 Based on the documents provided by  
23 MortgageTree, the calculation would be  
24 as follows:

$$(\$1,325 \times 165 \text{ loans}) / \$811,871 = 27 \text{ percent}$$

25 2. Plaintiff's percentage of the total  
26 claim should be calculated by  
27 subtracting MortgageTree's Percentage  
from 100 percent ("Plaintiff's  
Percentage"). Based on the above  
calculation of MortgageTree's  
Percentage, Plaintiff's Percentage would  
be as follows:

$$100 \text{ percent} - 27 \text{ percent} = 73 \text{ percent}$$

28 3. The amount of the proceeds that belong  
29 to [P]laintiff should be calculated by  
30 multiplying the total amount of the  
31 settlement proceeds times Plaintiff's  
32 Percentage.

$$\$378,000 \times 73 \text{ percent} = \$275,940.$$

1 Plaintiff should be responsible for  
2 paying Plaintiff's percentage of costs  
3 and attorneys' fees actually paid by  
MortgageTree to Laurence Berman relating  
to the claim against Zurich.

4 (Pl.'s Answer to Draizen's Special Interrogs. 7:21-8:23; Pl.'s Answer  
5 to Mize's Special Interrogs. 7:18-8:14.)

6 Defendants have not shown that Plaintiff's answer to  
7 Defendants' special interrogatories runs afoul of Federal Rules of  
8 Civil Procedure 26(a) (1) (A) (iii) or 26(e) (1) (A) and that Plaintiff  
9 should be precluded from offering evidence, testimony, attorney  
10 argument or other comments at trial concerning his assertion of  
11 damages. See Reyes v. City of Glendale, No. 05-0253 CAS (MANx), 2009  
12 WL 2579614, at \*5-6 (Aug. 19, 2009) (finding that plaintiff  
13 "sufficiently demonstrated that he has adequately disclosed evidence  
14 regarding damages" through his deposition testimony and responses to  
15 interrogatories). Therefore, Defendants' motion in limine no. 1 is  
16 denied.

17 **B. Defendants' Motion in Limine No. 2**

18 Defendants also argue Plaintiff should be precluded from  
19 offering evidence or expert testimony as to his damages calculation  
20 since Plaintiff is not qualified as an expert under Federal Rule of  
21 Evidence 702 and the basis of his damages calculation is unreliable.  
22 Plaintiff responds that "[p]roof of damages does not require expert  
23 testimony."

24 It is unclear what testimony is involved in this motion,  
25 therefore, Defendants' motion in limine no. 2 is denied.

26 **C. Defendants' Motion in Limine No. 3**

27 Lastly, Defendants argue Plaintiff should be precluded from  
28 offering evidence, lay testimony, attorney argument or other comments

regarding his calculation of damages under Federal Rule of Evidence 701 since Plaintiff "bases his calculations merely on speculation and calculations performed by parties other than himself." Plaintiff responds that he is entitled to rely on information produced by defendants in calculating his damages.

It is also unclear what testimony is involved in this motion, therefore, Defendants' motion in limine no. 3 is denied.

## II. Plaintiff's Motion in Limine

Plaintiff filed a motion in limine in which he seeks to preclude the testimony of two witnesses as well as exclude broad swaths of evidence. Plaintiff, however, has provided no argument or authority in support of his motion. Therefore, Plaintiff's motion in limine is denied.

Dated: April 19, 2010

GARLAND E. BURRELL, JR.  
United States District Judge