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E-FILED: August 1, 2013

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FELTON A. SPEARS, JR. and SIDNEY
SCHOLL, on behalf of themselves and all others
similarly situated,

No. C08-00868 RMW (HRL)

Plaintiffs,

**ORDER RE DISCOVERY DISPUTE
JOINT REPORT NO. 2**

v.

[Re: Docket No. 302]

FIRST AMERICAN EAPPRAISEIT (a/k/a
eAppraiseIT, LLC), a Delaware limited liability
company,

Defendant.

Plaintiffs sue for themselves and on behalf of a certified class of “[a]ll consumers in California and throughout the United States who, on or after June 1, 2006, received home loans from Washington Mutual Bank, FA in connection with appraisals that were obtained through eAppraiseIT.” They claim that defendants engaged a scheme to inflate the appraised values of homes receiving loans in order to sell the aggregated security interests at inflated prices. First American EAppraiseIT (EA) is the only defendant left. This court is told that plaintiffs’ sole remaining claim for relief is that the complained-of conduct violates the Real Estate Settlement Practices Act (RESPA), 12 U.S.C. § 2607(a).

In Discovery Dispute Joint Report (DDJR) No. 2, EA seeks an order compelling plaintiffs to further respond to Request for Admission (RFA) No. 1 and to supplement their Fed.

1 R. Civ. P. 26(a) disclosures. EA also seeks leave to propound three additional interrogatories
2 beyond the presumptive 25-interrogatory limit.

3 EA's Request for Admission No. 1 asks plaintiffs to "[a]dmit that, according to You,
4 there was a single conspiracy between WAMU, EA and LSI to inflate the appraised value of
5 property underlying Your mortgage loans." (Dkt. No. 302-1, DDJR No. 2, Ex. 1). Pointing out
6 that Judge Whyte previously found that their complaint described two parallel conspiracies (one
7 between EA and Washington Mutual and another between previous defendant Lenders
8 Services, Inc. and Washington Mutual), plaintiffs responded by saying that they had no
9 information beyond their complaint's allegations that would enable them to admit or deny the
10 subject matter of the request. Defendant has not convincingly demonstrated that plaintiffs'
11 response is improper. EA's request for an order compelling a further response is denied.

12 EA requests permission to serve three additional interrogatories on plaintiff Spears
13 asking for the identities of all persons who knew about, agreed to, and participated in the
14 alleged conspiracy. The court may grant leave to serve additional interrogatories to the extent
15 consistent with Fed. R. Civ. P. 26(b)(2). FED. R. CIV. P. 33(a)(1). EA's proposed new
16 interrogatories are duplicative of prior interrogatories served on both plaintiffs. (Dkt. No. 302-
17 1, DDJR No. 2, Exs. 4-5). EA's request therefore is denied.

18 In their Fed. R. Civ. P. 26(a) disclosures, plaintiffs listed "Members of the certified
19 class" as persons with knowledge that they may use to support their claim. (Dkt. No. 302-1,
20 DDJR No. 2, Ex. 3). Pointing out that the certified class could include over 230,000
21 individuals, EA requests an order requiring plaintiffs to specifically identify members of the
22 class that they will use to support their claim. Plaintiffs say that they listed "Members of the
23 certified class" as potential witnesses because they may have to send out a questionnaire to
24 determine whether some people actually are class members. The court does not understand why
25 that would preclude plaintiffs from identifying specific class members that they know about
26 now. EA's request therefore is granted as follows: Within 14 days from the date of this order,
27 plaintiffs shall serve supplemental disclosures identifying specific class members, if any, that
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they know about now and may use to support their claim.

SO ORDERED.

Dated: August 1, 2013



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

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