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6 **UNITED STATES DISTRICT COURT FOR THE**
7 **EASTERN DISTRICT OF WASHINGTON**

8 JAMES S. GORDON, JR.,

No. CV-04-5125-FVS

9 Plaintiff,

10 vs.

SECOND AMENDED
THIRD PARTY COMPLAINT

11 IMPULSE MARKETING GROUP,
12 INC.,

13 Defendant

14 IMPULSE MARKETING GROUP,
15 INC.,

16 Third-Party Plaintiff,

17 vs.

18 BONNIE GORDON, et al.,

19 Third-Party Defendants.

20 **SECOND AMENDED THIRD PARTY COMPLAINT AGAINST BONNIE**
21 **GORDON, JAMES S. GORDON, III, JONATHAN GORDON, JAMILA**
22 **GORDON, ROBERT PRITCHETT AND EMILY ABBEY**

23 Third party plaintiff, Impulse Marketing Group (“Impulse,” “Defendant” or
24 “Third Party Plaintiff”) as and for its second amended third party complaint against
25 third party defendants Bonnie Gordon, James S. Gordon, III, Jonathan Gordon, Jamila
26 Gordon, Robert Pritchett and Emily Abbey (collectively, “Third Party Defendants”),
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1 alleges as follows:
2

3 **Background**

4 1. Impulse is a permission-based on-line marketing company that collects
5 personally identifiable information from individuals who sign up to receive free
6 products and/or services at websites run by Impulse and/or its marketing partners.
7

8 2. In reciprocal consideration for receiving free products and/or services
9 from an Impulse-related website, Impulse requires that individuals using its websites
10 agree to submit to Impulse accurate personal subscriber information (“Subscriber
11 Profile”) in return.
12

13 3. By submitting their Subscriber Profile to Impulse, individuals grant
14 Impulse the right to use their Subscriber Profile for, *inter alia*, transferring the
15 Subscriber Profile to third parties for marketing purposes.
16

17 4. Impulse derives substantial revenue from the licensing and/or use of
18 accurate Subscriber Profiles. This quid pro quo is the fundamental business model
19 of on-line marketing.
20

21 5. An accurate and truthful Subscriber Profile for the products and/or
22 services located at the applicable Impulse-related website is therefore of utmost
23 significance to Impulse.
24

25 6. Any failure of an individual to provide Impulse with an accurate and
26 truthful Subscriber Profile, in violation of the applicable website Terms and
27
28

1 Conditions, adversely impacts Impulse’s business revenue because an inaccurate
2 Subscriber Profile in the open market is considered a bad lead for other third party
3 marketing companies.
4

5 7. Licensing or using inaccurate Subscriber Profiles damages Impulse’s
6 reputation and negatively impacts Impulse’s relationships with its third party
7 marketing partners.
8

9 8. Third Party Defendants are complicit in a premeditated and systematic
10 effort to cause harm to Impulse by providing Impulse with false and/or inaccurate
11 Subscriber Profiles at various Impulse-related websites.
12

13 9. Third Party Defendants are complicit in a premeditated and systematic
14 effort to cause harm to Impulse by conspiring with Plaintiff James Gordon
15 (“Plaintiff”) to provide Impulse with false and/or inaccurate Subscriber Profiles.
16

17 10. Third Party Defendants are complicit in a premeditated and systematic
18 effort to cause harm to Impulse by conspiring with Plaintiff to have Mr. Gordon claim
19 to be said third parties when in fact, the individual certifying their identity and
20 accuracy of their Subscriber Profile was in fact someone else, to wit, Plaintiff.
21

22 11. There is no legitimate reason for Third Party Defendants to engage in a
23 premeditated and systematic scheme to cause harm to Impulse by repeatedly
24 soliciting, unsubscribing and then repeatedly re-soliciting email from Impulse and/or
25 its marketing partners in an effort to fabricate claims against Impulse based upon their
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1 subjective belief that Impulse violated RCW 19.190 et seq.

2
3 12. Third Party Defendants are complicit in a premeditated and systematic
4 effort to cause harm to Impulse by failing to give Impulse the benefit of the bargain,
5 particularly after Third Party Defendants received free products and/or services from
6 the applicable Impulse-related website while Impulse received inaccurate, untruthful,
7 or otherwise incomplete Subscriber Profiles in return.
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10 13. Third Party Defendants had specific intent to drive email messages to the
11 “gordonworks.com” domain (the “Domain”) which emails they subjectively believed
12 violated RCW 19.190 et seq., solely for the purposes of causing Impulse pecuniary
13 and reputational harm while deliberately attempting to fabricate and exacerbate legal
14 claims. Third Party Defendants’ actions were undertaken in deliberate bad faith.
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17 14. Third Party Defendants are complicit in a premeditated and systematic
18 effort to cause harm to Impulse by interfering with existing agreements between
19 Impulse and its third party marketing partners.
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21 **First Cause of Action**
22 **Indemnification and Contribution**

23 15. Third Party Plaintiff incorporates by reference paragraphs 1 through 14,
24 above, as though fully set forth herein.

25
26 16. Plaintiff sued Defendant/Third Party Plaintiff on the theory that he
27 received email messages that allegedly did not comport with RCW 19.190 et seq.
28

1 17. If Defendant/Third Party Plaintiff is found to be in any way liable to
2 Plaintiff, which liability Defendant/Third Party Plaintiff wholly denies, then
3
4 Defendant/Third Party Plaintiff demands judgment over and against, Third Party
5 Defendants, for indemnity and contribution for the full amounts of said liability.

6
7 18. If Defendant/Third Party Plaintiff is found to be in any way liable to
8 Plaintiff, which liability Defendant/Third Party Plaintiff wholly denies, then
9
10 Defendant/Third Party Plaintiff demands judgment over and against, Third Party
11 Defendants, for indemnity and contribution for the full amounts due to Third Party
12 Defendants' scheme to drive email messages to the Domain which emails they
13 subjectively believed violated RCW 19.190 et seq. Third Party Defendants' sole
14 intention was to fabricate and exacerbate claims against Impulse.
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16 19. If Defendant/Third Party Plaintiff is found to be in any way liable to
17 Plaintiff, which liability Defendant/Third Party Plaintiff wholly denies, then
18
19 Defendant/Third Party Plaintiff demands judgment over and against, Third Party
20 Defendants, for indemnity and contribution for the full amounts of said liability
21 because Third Party Defendants repeatedly solicited, unsubscribed and then
22 repeatedly re-solicited email from Impulse and/or its marketing partners in an effort
23 to fabricate and exacerbate claims against Impulse based upon their subjective belief
24 that Impulse violated RCW 19.190 et seq.
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27 20. Based upon such conduct, if Defendant/Third Party Plaintiff is found to
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1 be in any way liable to Plaintiff, which liability Defendant/Third Party Plaintiff
2 wholly denies, then Defendant/Third Party Plaintiff demands judgment over and
3 against, Third Party Defendants, for indemnity and contribution for the full amounts
4 of said liability.
5

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7 **Second Cause of Action**
8 **Fraud and Deceit**

9 21. Third Party Plaintiff incorporates by reference paragraphs 1 through 20,
10 above, as though fully set forth herein.

11 22. Third Party Defendants are complicit in a premeditated and systematic
12 effort to cause harm to Impulse by knowingly providing Impulse with false
13 Subscriber Profiles at various Impulse-related websites.
14

15 23. Third Party Defendants are complicit in a premeditated and systematic
16 effort to cause harm to Impulse by directing and conspiring with Plaintiff to provide
17 Impulse with false and/or inaccurate Subscriber Profiles.
18

19 24. Third Party Defendants are complicit in a premeditated and systematic
20 effort to cause harm to Impulse by falsely claiming to be said third parties when in
21 fact, the individual certifying their identity and accuracy of their Subscriber Profile
22 was in fact someone else, to wit, Plaintiff.
23

24 25. Third Party Defendants had specific intent to fraudulently drive email
25 messages to the Domain which emails they subjectively believed violated RCW
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1 19.190 et seq. solely for the purpose of causing Third Party Plaintiff pecuniary and
2 reputational harm while deliberately attempting to fabricate and exacerbate legal
3 claims. Third Party Defendants' actions were undertaken in deliberate bad faith.
4

5 26. Third Party Defendants are complicit in a premeditated and systematic
6 effort to cause harm to Impulse by fraudulently interfering with existing agreements
7 between Impulse and its third party marketing partners.
8

9 27. Third Party Defendants are complicit in a premeditated and systematic
10 effort to fraudulently cause harm to Impulse by repeatedly soliciting, unsubscribing
11 and then repeatedly re-soliciting email from Impulse and/or its marketing partners in
12 an effort to fabricate and exacerbate claims against Third Party Plaintiff based upon
13 their subjective belief that Impulse violated RCW 19.190 et seq.
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16 28. This conduct was deliberate and deceitful and at the time such conduct
17 occurred, Third Party Defendants knew that this conduct was deceitful.
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19 29. Third Party Defendants fraudulent conduct was for their own benefit and
20 to Third Party Plaintiff's detriment.
21

22 30. Third Party Defendants deceitful actions were undertaken to induce
23 Third Party Plaintiff and/or its marketing partners to incur excessive business
24 operational costs and associated expenditures with running its business and to
25 fabricate and exacerbate legal claims against Third party Plaintiff based upon their
26 subjective belief that Impulse violated RCW 19.190 et seq.
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1 31. On September 16, 2003, and upon information and belief, on numerous
2 other dates to be provided after the completion of discovery, Third Party Defendant,
3 Jonathan Gordon, directed, permitted, or conspired with Plaintiff, for Jonathan
4 Gordon's own pecuniary benefit, to provide Impulse with an inaccurate and
5 untruthful Subscriber Profile at the website located at www.homeforfreestuff.com and
6 was complicit in a premeditated and systematic effort to cause harm to Impulse by
7 repeatedly soliciting, unsubscribing and then repeatedly re-soliciting email from
8 Impulse and/or its marketing partners in an effort to fabricate and exacerbate claims
9 against Impulse based upon a subjective belief that Impulse violated RCW 19.190 et
10 seq.
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12 32. On September 17, 2003 and upon information and belief, on numerous
13 other dates to be provided after the completion of discovery, Third Party Defendant,
14 Jonathan Gordon, directed, permitted, or conspired with Plaintiff, for his own
15 pecuniary benefit, to provide Impulse with an inaccurate and untruthful Subscriber
16 Profile at the website located at www.emailprize.com from an Internet Protocol
17 Address located at 4.5.74.214 and was complicit in a premeditated and systematic
18 effort to cause harm to Impulse by repeatedly soliciting, unsubscribing and then
19 repeatedly re-soliciting email from Impulse and/or its marketing partners in an effort
20 to fabricate and exacerbate claims against Impulse based upon a subjective belief that
21 Impulse violated RCW 19.190 et seq.
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1 33. On September 17, 2003 and upon information and belief, on numerous
2 other dates to be provided after the completion of discovery, Third Party Defendant,
3 Jamila Gordon, Third Party Defendant, Jamila Gordon, directed, permitted, or
4 conspired with Plaintiff, for Jamila Gordon's own pecuniary benefit, to provide
5 Impulse with an inaccurate and untruthful Subscriber Profile at the website located
6 at www.emailprize.com was complicit in a premeditated and systematic effort to
7 cause harm to Impulse by repeatedly soliciting, unsubscribing and then repeatedly re-
8 soliciting email from Impulse and/or its marketing partners in an effort to fabricate
9 and exacerbate claims against Impulse based upon a subjective belief that Impulse
10 violated RCW 19.190 et seq.
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15 34. On September 3, 2003 and upon information and belief, on numerous
16 other dates to be provided after the completion of discovery, Third Party Defendant,
17 James S. Gordon, III, directed, permitted, or conspired with Plaintiff, for James S.
18 Gordon, III's own pecuniary benefit, to provide Impulse with an inaccurate and
19 untruthful Subscriber Profile at the website located at www.emailprize.com from an
20 Internet Protocol Address located at 4.5.74.214 and was complicit in a premeditated
21 and systematic effort to cause harm to Impulse by repeatedly soliciting, unsubscribing
22 and then repeatedly re-soliciting email from Impulse and/or its marketing partners in
23 an effort to fabricate and exacerbate claims against Impulse based upon a subjective
24 belief that Impulse violated RCW 19.190 et seq.
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1 35. On September 17, 2003 and upon information and belief, on numerous
2 other dates to be provided after the completion of discovery, Third Party Defendant,
3 Bonnie Gordon, directed, permitted, or conspired with Plaintiff, for Bonnie Gordon's
4 own pecuniary benefit, to provide Impulse with an inaccurate and untruthful
5 Subscriber Profile at the website located at www.emailprize.com and was complicit
6 in a premeditated and systematic effort to cause harm to Impulse by repeatedly
7 soliciting, unsubscribing and then repeatedly re-soliciting email from Impulse and/or
8 its marketing partners in an effort to fabricate and exacerbate claims against Impulse
9 based upon a subjective belief that Impulse violated RCW 19.190 et seq.
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13 36. In September 2003 and upon information and belief, on numerous other
14 dates to be provided after the completion of discovery, Third Party Defendant, Robert
15 Pritchett, directed, permitted, or conspired with Plaintiff, for Robert Pritchett's own
16 pecuniary benefit, to provide Impulse with an inaccurate and untruthful Subscriber
17 Profile at the website located at www.emailprize.com and was complicit in a
18 premeditated and systematic effort to cause harm to Impulse by repeatedly soliciting,
19 unsubscribing and then repeatedly re-soliciting email from Impulse and/or its
20 marketing partners in an effort to fabricate and exacerbate claims against Impulse
21 based upon a subjective belief that Impulse violated RCW 19.190 et seq.
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26 37. In September 2003 and upon information and belief, on numerous other
27 dates to be provided after the completion of discovery, Third Party Defendant, Emily
28

1 Abbey, directed, permitted, or conspired with Plaintiff, for Emily Abbey's own
2 pecuniary benefit, to provide Impulse with an inaccurate and untruthful Subscriber
3 Profile at the website located at www.emailprize.com and was complicit in a
4 premeditated and systematic effort to cause harm to Impulse by repeatedly soliciting,
5 unsubscribing and then repeatedly re-soliciting email from Impulse and/or its
6 marketing partners in an effort to fabricate and exacerbate claims against Impulse
7 based upon a subjective belief that Impulse violated RCW 19.190 et seq.
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11 38. Third Party Plaintiff justifiably relied on Third Party Defendants'
12 untruthful, inaccurate and fraudulent representations and Subscriber Profiles by
13 negotiating and fulfilling marketing agreements with Impulse's third party business
14 partners causing Third Party Plaintiff to incur excessive business operational costs
15 and associated expenditures with running its business.
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18 39. Third Party Plaintiff believed that Third Party Defendants'
19 representations and Subscriber Profiles were true and accurate and were ignorant of
20 their falsity at the time when Third Party Defendants submitted their Subscriber
21 Profile to Third Party Plaintiff and/or its marketing partners.
22

23 40. As a proximate result of Third Party Plaintiff's reliance on Third Party
24 Defendants' deceitful, untruthful and inaccurate representations and Subscriber
25 Profiles, Third Party Plaintiff was damaged in an amount to be determined at trial.
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27 41. In doing the acts herein alleged, Third Party Defendants acted with
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1 oppression, deceit, fraud, and malice, and Third Party Plaintiff is entitled to punitive
2 damages in an amount to be proven at the time of trial.
3

4 **Third Cause of Action**
5 **Tortious Interference with Business Relationships**

6 42. Third Party Plaintiff incorporates by reference paragraphs 1 through 41,
7 above, as though fully set forth herein.
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9 43. Third Party Plaintiff provides permission-based marketing services to its
10 customers and on-line business partners.
11

12 44. Third Party Plaintiff has developed business relationships and entered
13 into a valid contractual relationship with its on-line business partners over time.
14

15 45. Third Party Defendants had knowledge of Third Party Plaintiff's
16 contractual business relationships based upon the Privacy Policy located at applicable
17 Impulse-related websites.
18

19 46. Third Party Plaintiff relied on Third Party Defendants' untruthful and
20 inaccurate representations and Subscriber Profiles by negotiating and fulfilling
21 marketing agreements with Third Party Plaintiff's third party business partners.
22

23 47. Third Party Defendants' failure to provide Impulse with accurate and
24 truthful Subscriber Profiles, in violation of the applicable website Terms and
25 Conditions, damaged Impulse's reputation with its third party business partners and
26 negatively impacted Impulse's business revenue because the Third Party Defendants'
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1 Subscriber Profiles in the open market were considered bad leads for other third party
2 marketing companies.
3

4 48. Due to Third Party Defendants' untruthful and inaccurate representations
5 and Subscriber Profiles, as well as Third Party Defendants' other improper actions,
6 Third Party Plaintiff is likely to sustain and has sustained a loss of business
7 relationships with its on-line marketing business partners.
8

9 49. Third Party Defendants' conduct in knowingly providing Impulse with
10 untruthful and inaccurate Subscriber Profiles have caused a loss of contractual
11 business relationships with Third Party Plaintiff's on-line marketing business
12 partners.
13
14

15 50. As a result of the foregoing, Third Party Plaintiff has sustained monetary
16 losses in an amount to be determined at trial.
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18 51. Due to Third Party Defendants' deliberate scheme to harm Third Party
19 Plaintiff and fabricate and exacerbate claims, Third Party Plaintiff is also entitled to
20 punitive damages in an amount to be proven at the time of trial.
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22 **Fourth Cause of Action**
23 **Breach of Contract**

24 52. Third Party Plaintiff incorporates by reference paragraphs 1 through 51,
25 above, as though fully set forth herein.
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1 53. Third Party Plaintiff provides its consumer's with online permission-
2 based marketing services.
3

4 54. Third Party Defendants directly and/or by conspiring with Plaintiff,
5 accepted and consented to receive permission-based marketing services by
6 contractually agreeing to the Impulse-related website Terms and Conditions as well
7 as the applicable website Privacy Policy in order to receive commercial email from
8 Impulse and/or its third party marketing partners.
9
10

11 55. Third Party Defendants directly and/or by conspiring with Plaintiff,
12 contractually represented and certified to Impulse and/or its third party marketing
13 partners that their Subscriber Profiles provided to Third Party Plaintiff and/or its
14 marketing partners, were true and accurate.
15

16 56. Third Party Defendants had a duty to accept the commercial email in a
17 proper manner without negating the benefit conferred upon Third Party Defendants
18 by Third Party Plaintiff.
19

20 57. Third Party Defendants had a contractual duty to accurately represent
21 and certify that their Subscriber Profiles provided to Third Party Plaintiff, or its
22 marketing partners, were true and accurate.
23

24 58. Third Party Defendants breached their contractual duty by being
25 complicit in a premeditated and systematic effort to cause harm to Impulse by
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1 providing Impulse with knowingly false and/or inaccurate Subscriber Profiles at
2 various Impulse-related websites.
3

4 59. Third Party Defendants breached their contractual obligations by being
5 complicit in a premeditated and systematic effort to cause harm to Impulse by falsely
6 claiming to be said third parties when in fact, the individual certifying their identity
7 and accuracy of their Subscriber Profile was in fact someone else, to wit, Plaintiff.
8

9 60. Third Party Defendants breached their contractual obligations by being
10 complicit in a premeditated and systematic effort to cause harm to Impulse by failing
11 to give Impulse the benefit of the bargain particularly where Third Party Defendants
12 received free products and/or services from the applicable Impulse-related website
13 while Impulse received inaccurate, untruthful, or otherwise incomplete Subscriber
14 Profiles in return.
15

16 61. Third Party Defendants breached their contractual obligations by having
17 the specific intent to drive email messages to the Domain which emails they
18 subjectively believed violated RCW 19.190 et seq. solely for the purpose of causing
19 Third Party Plaintiff pecuniary and/or reputational harm and to fabricate and
20 exacerbate legal claims.
21

22 62. Third Party Defendants breached their contractual obligations by being
23 complicit in a premeditated and systematic effort to cause harm to Impulse by
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1 interfering with existing agreements between Impulse and its third party marketing
2 partners.
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4 63. Third Party Defendants breached their contractual obligations by being
5 complicit in a premeditated and systematic effort to cause harm to Impulse by
6 repeatedly soliciting, unsubscribing and then repeatedly re-soliciting email from
7 Impulse and/or its marketing partners in an effort to fabricate and exacerbate claims
8 against Impulse based upon their subjective belief that Impulse violated RCW 19.190
9 et seq.
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12 64. Third Party Plaintiff has performed all of the obligations on its part to
13 be performed under the contractual agreement between the parties.
14

15 65. As a proximate result of the breach of the agreement, including those
16 express communications, solicitations and inaccurate and untruthful Subscriber
17 Profiles submitted to Impulse by Third Party Defendants, personally or as a user of
18 the Domain, Third Party Plaintiff has sustained monetary damages, in the amount to
19 be determined at trial.
20
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22 **Fifth Cause of Action**
23 **Injunctive Relief**

24 66. Third Party Plaintiff incorporates by reference paragraphs 1 through 65,
25 above, as though fully set forth herein.
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27 67. Third Party Plaintiff has suffered and will continue to suffer irreparable
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1 damages unless Third Party Plaintiff is granted injunctive relief.

2
3 68. There is no legitimate reason for Third Party Defendants to repeatedly
4 solicit, unsubscribe and then repeatedly re-solicit email from Impulse and/or its
5 marketing partners in an effort to fabricate and exacerbate claims against Impulse
6 based upon their subjective belief that Impulse violated RCW 19.190 et seq.
7

8 69. If Third Party Plaintiff is unable to stop Third Party Defendants' conduct
9 and further schemes by Third Party Defendants, Third Party Plaintiff will suffer
10 irreparable damages including, but not limited to, its goodwill and reputation.
11

12 70. For this harm and damage, Third Party Plaintiff has no adequate remedy
13 at law.
14

15 71. These damages are continuing, and to a large degree will be incalculable.

16 72. Third Party Plaintiff therefore requests the Court to enter a preliminary
17 injunction enjoining Third Party Defendants, their agents, servants, employees, and
18 those acting in concert with them from: (a) repeatedly soliciting, unsubscribing and
19 then repeatedly re-soliciting email from Impulse and/or its marketing partners in an
20 effort to fabricate and exacerbate claims against Impulse based upon their subjective
21 belief that Impulse violated RCW 19.190 et seq.; and (b) knowingly provide Impulse
22 and/or its marketing partners with false, inaccurate and untruthful Subscriber Profiles.
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27 73. Third Party Plaintiff further requests upon trial of this Second Amended
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1 Third Party Complaint, that the preliminary injunction be made into a permanent
2 injunction so enjoining Third Party Defendants.
3

4 WHEREFORE, Defendant/Third Party Plaintiff respectfully requests that this
5 Court grant judgment and relief against Third Party Defendants as follows:
6

- 7 1. Compensatory damages in an amount to be determined at trial;
- 8 2. An award of attorneys' fees and costs;
- 9 3. Punitive damages for Third Party Defendants' willful bad faith and
10 deliberate effort to cause Third Party Plaintiff pecuniary and
11 reputational harm and to fabricate and exacerbate false claims against
12 Third Party Plaintiff.
13
- 14 4. Such other and further relief as this Court deems appropriate.
15

16 Dated: November 18, 2005
17

18 /s/ FLOYD E. IVEY
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27 /S FLOYD E. IVEY FOR SEAN
 28 MOYNIHAN

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I hereby certify that on November 18, 2005, I electronically filed **Third Party Plaintiff's Memorandum in Support of Defendant and Third Party Plaintiff's Motion to Amend Third Party Complaint** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to Douglas E. McKinley, Jr., Peter J. Glantz and Sean A. Moynihan. I hereby certify that I have served the foregoing to the following non-CM/ECF participants by other means: Bonnie Gordon, Jonathan Gordon, James S. Gordon, III, Robert Pritchett, Emily Abbey and Jamila Gordon.

S/ FLOYD E. IVEY
FLOYD E. IVEY