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24 **UNITED STATES DISTRICT COURT FOR THE**
 25 **EASTERN DISTRICT OF WASHINGTON**

26 JAMES S. GORDON, JR.,

27 Plaintiff,

28 vs.

IMPULSE MARKETING GROUP,
 INC.,

Defendant

IMPULSE MARKETING GROUP,
 INC.,

Third-Party Plaintiff,

vs.

BONNIE GORDON, et al.,

Third-Party Defendants.

No. CV-04-5125-FVS

DEFENDANT'S MEMORANDUM
 IN SUPPORT OF DEFENDANT'S
 MOTION TO COMPEL AND FOR
 SANCTIONS

1 The Defendant has filed its Motion to Compel Plaintiff's Response to
2 Defendant's Discovery served on Plaintiff December 6, 2005. Counsel for
3 Plaintiff advises that he will withdraw and or that other counsel will substitute and
4 that such should have been accomplished by Friday, February 17, 2006. There has
5 been no substitution and no response by counsel to the request for conference.

6 Defendant's Motion to Compel is pursuant to FRCP 37(a)(2). Counsel for
7 Defendant certifies that a good faith attempt has been made to confer with
8 Plaintiff's counsel. Defendant has sent a request for a conference pursuant to LR
9 37.1 to Plaintiff attorney Mr. McKinley, by fax and email, on February 14, 2006, a
10 copy of which is annexed hereto. Plaintiff's counsel has not further responded.

11 Defendant asks the Court to award Sanctions per FRCP 37(a)(4). *Freeman*
12 *v. San Diego Ass'n of Realtors* 322 F.3d 1133, 1156 (C.A.9 Cal. 2003).

13 Discovery Cutoff is April 3, 2006.

14 DATED this 21st day of February, 2006.

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16 LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE

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20 By s/ Floyd E. Ivey
21 FLOYD E. IVEY, WSBA#6888
22 Attorneys for Defendant

23 I hereby certify that on February 21, 2006, I electronically filed
24 **Defendant's Memorandum in Support of Motion to Compel** with the Clerk of
25 the Court using the CM/ECF System which will send notification of such filing to
26 Douglas E. McKinley, Jr., Peter J. Glantz and Sean A. Moynihan. I hereby certify
27 that I have served the foregoing to the following non-CM/ECF participants by
28 other means: Bonnie Gordon, Jonathan Gordon, James S. Gordon, III, Robert
Pritchett, Jamila Gordon and Emily Abbey.

29 S/ FLOYD E. IVEY
30 FLOYD E. IVEY