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 8 **IN THE UNITED STATES DISTRICT COURT**
 9 **FOR THE EASTERN DISTRICT OF WASHINGTON**

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 11 **JAMES S. GORDON, JR.,**

NO. CV-04-5125-FVS

12 **Plaintiff,**

**RESPONSE TO DEFENDANT'S
 MOTION TO COMPEL**

13 v.

14 **IMPULSE MARKETING GROUP,
 INC.,**

[HEARING: MARCH 8, 2006]

15 **Defendant.**

16 Plaintiff respectfully responds as follows to Defendant's Motion To Compel:

17 1. **Defendant's Motion Is Not Well Founded And Is Unnecessary.** The
 18 undersigned has only recently substituted into this case. As explained to Defendant's counsel in
 19 correspondence between them, the undersigned requested a reasonable continuance in order to
 20 have adequate time within which to respond to this motion, and/or to provide Defendant with
 21 Plaintiff's answers and responses to the discovery requests at issue here. He further offered to
 22 extend the discovery deadline in an accommodation. Defendant agreed to Plaintiff's request for a
 23 reasonable continuance of this Motion (originally noted as Expedited for March 3, 2006), which
 24 is now noted for hearing on March 8, 2006. Since that time Plaintiff has provided his responses
 25 to Defendant's discovery requests.

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 RESPONSE TO DEFENDANT'S
 MOTION TO COMPEL - 1

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1 2. **Defendant Complains That Plaintiff Has Failed To Provide His Trial Preparation,**
2 **And/Or To Prepare Defendant's Case.** In correspondence, Defendant has alleged specific
3 deficiencies in response to Plaintiff's answers. Essentially, what Defendant's alleged
4 deficiencies boil down to is that Plaintiff has failed to state with specificity as to each of the
5 thousands of offending emails sent by Defendant (approximately 6,500) which parts of each
6 email violate which provisions of the Washington CEMA. The emails speak for themselves as to
7 how they violate the applicable statutes, and determining that is a question of law for the Court,
8 and/or fact for the jury. Further, Plaintiff has provided Defendant with extensive forensic
9 analyses (hundreds of pages) showing the tracing of the subject emails. Thus, Defendant has
10 been provided with everything in Plaintiff's possession insofar as the offending emails are
11 concerned and, with the exception of supplemental responses to be produced when appropriate,
12 nothing more should be required of him at this point.

13 The Washington CEMA speaks in terms of "false or misleading" information in the
14 'subject' header field and/or which "obscures" information in the transmission path or point of
15 origin of commercial emails, "spam". Plaintiff will, of course, be prepared at trial to establish
16 that each of the offending emails violated the applicable statutes in one or more ways, however,
17 it is not Plaintiff's burden at this point in the litigation to prepare his trial exhibits, or to prepare
18 Defendant's case for him.

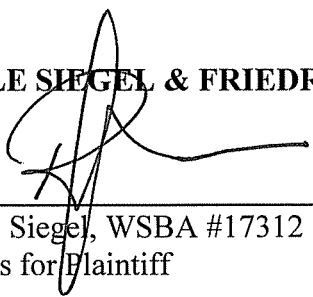
19 2. **Defendant Has Not Been Prejudiced By, Nor Should Plaintiff Be Penalized For**
20 **A Short Delay Occasioned By The Transfer Of His Case To A New Attorney.**

21 Defendant's Motion was unnecessary. Had Defendant simply agreed to a short and
22 reasonable continuance to allow new counsel time to do his due diligence, and to respond
23 to outstanding discovery requests, the need for Defendant's Motion could have easily
24 been obviated. As stated above, Plaintiff has now provided extensive discovery
25 responses, including, but not limited to: tens of thousands of pages of emails, email
26 histories, and forensic email tracing records. Plaintiff respectfully requests that the Court
exercise its discretion and not sanction him for any delays in responding to discovery
occasioned by his transfer of the case to new counsel.

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2 [The Court should also note that Defendant has provided nothing in the way of responses to
3 Third-Party Defendants' overdue and outstanding discovery requests.]

4 **RESPECTFULLY SUBMITTED** this 27th day of February, 2006.

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6 **MERKLE SIEGEL & FRIEDRICHSEN, P.C.**

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9 Robert J. Siegel, WSBA #17312
10 Attorneys for Plaintiff

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RESPONSE TO DEFENDANT'S
MOTION TO COMPEL - 3

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