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Floyd E. Ivey
Liebler, Ivey & Connor, P.S.
1141 N. Edison, Suite C
P.O. Box 6125
Kennewick, WA 99336
Telephone (509) 735-3581
Fax (509) 735-3585

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

JAMES S. GORDON, JR., an individual
residing in Benton County, Washington,

Plaintiffs

vs.

IMPULSE MARKETING GROUP, INC.,
a Nevada Corporation,

Defendants

NO. CV-04-5125-FVS

DEFENDANT’S
MEMORANDUM OPPOSING
PLAINTIFF’S MOTION /
DECLARATION REGARDING
APPEARANCE AT
MOTION TO DISMISS

Defendant Impulse Marketing Group, Inc. opposes Plaintiff’s request via Motion/Declaration to have other than telephonic hearing of Defendant’s Motion to Dismiss.

It will be judicially efficient and economically prudent for the parties for Defendant’s Motion to Dismiss to be heard telephonically. Requiring the presence of the parties will necessarily require the Court to devote resources, not required for a telephonic hearing, should the matter be heard with personal appearances by one or all of the parties before the Court. Hearing motions in the Eastern District has commonly occurred via telephonic hearing. Such is appropriate for the Defendant’s Motion to Dismiss.

The goal to conserve judicial resources and promote an efficient

LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE
Attorneys at Law
P.O. Box 6125
Kennewick, Washington 99336-0125
(509) 735-3581

Defendant’s Memorandum Opposing
Personal Appearance - 1.

1 determination of action(s) has been widely considered and is the subject of
2 Local Rules in many jurisdictions, e.g., Civ. L.R. 3-12(~)(2)-(3) for the
3 Northern District of California and S.D. FLA. E.R. 3.9C for the Southern
4 District of Florida. The court in *International Beauty Exchange, Inc. v. Tony*
5 *Dollar Kingdom Inc.*, 199 F.R.D. 700, 701 (S.D.Fla.,2001) addressed steps,
6 relative to assignment of cases to judges, "--**To assist Judges in avoiding the**
7 **duplication of judicial resources, S.D.FLA.L.R. 3.9D** requires "attorneys of
8 record in every action or proceeding to bring promptly to the attention of the
9 Court and opposing counsel the existence of other actions or proceedings..."

10 Courts have the power to manage cases. The processes available are
11 "designed to promote efficiency and conserve judicial resources...". *Berkovitz v.*
12 *Home Box Office, Inc.* 89 F.3d 24, 29 (C.A.1 (Mass.) 1996).

13 Counsel for the Defendant has found only a single instance where a hearing
14 by telephonic conference was found to be improper and where personal
15 appearance was required by statute. *Purba v. I.N.S.* 884 F.2d 516, 517(C.A.9
16 1989). There is no suggestion of such a requirement relative to the present motion.

17 Defendant's respectfully request the Court to conduct the argument of
18 Defendant's Motion to Dismiss by telephonic conference with all parties
19 participating by telephone.

20 DATED this 28th day of March, 2005.

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

22
23 By /S/FLOYD E. IVEY
24 FLOYD E. IVEY, WSBA #6888
25 Local Counsel for Defendant

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28 LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE
Attorneys at Law
P.O. Box 6125
Kennewick, Washington 99336-0125
(509) 735-3581

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KLEIN, ZELMAN, ROTHERMEL & DICHTER, LLP

By /S/SIGNED BY PERMISSION BY IVEY
PETER J. GLANTZ
Attorneys for Defendant

I hereby certify that on March 28, 2005, I electronically filed the **Defendant's Memorandum Opposing Plaintiff's Motion Requiring Personal Appearance at Motion to Dismiss** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Douglas E. McKinley, Jr., and I hereby certify that I have sent via internet email the document to the following non-CM/ECF participants: David O. Klein, Peter J. Glantz, Sean A. Moynihan.

S/ FLOYD E. IVEY
FLOYD E. IVEY

LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE
Attorneys at Law
P.O. Box 6125
Kennewick, Washington 99336-0125
(509) 735-3581

Defendant's Memorandum Opposing
Personal Appearance - 3.