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21 **UNITED STATES DISTRICT COURT FOR THE**  
 22 **EASTERN DISTRICT OF WASHINGTON**

23 JAMES S. GORDON, JR.,

24 Plaintiff,

25 vs.

26 IMPULSE MARKETING GROUP,  
 27 INC.,

28 Defendant

29 \_\_\_\_\_  
 30 IMPULSE MARKETING GROUP,  
 31 INC.,

32 Third-Party Plaintiff,

33 vs.

34 BONNIE GORDON, et al.,

35 Third-Party Defendants.

No. CV-04-5125-FVS

DEFENDANT AND THIRD PARTY  
 PLAINTIFF'S MEMORANDUM  
 RESPONSE TO PLAINTIFF'S  
 MOTIONS TO AMEND  
 COMPLAINT

AND RENOTING OF  
 DEFENDANT'S MOTION TO  
 COMPEL

FOR HEARING  
 CONTEMPORANEOUS WITH  
 PLAINTIFF'S MOTION TO AMEND  
 COMPLAINT

MAY 1, 2006

1  
2 **INTRODUCTION**

3 Plaintiff, James Gordon (“Plaintiff”), has moved to amend his Complaint. He  
4 scheduled this motion for a return date of May 1, 2006. Plaintiff then moved to  
5 expedite his motion to a return date of April 7, 2006 by scheduling the motion to  
6 expedite without oral argument on Friday, March 31, 2006, effectively “short-  
7 serving” Defendant, Impulse Marketing Group, Inc. (“Defendant”).

8 Defendant interposed a timely objection to Plaintiff’s motion to expedite  
9 requesting the Court to deny the motion to expedite. Plaintiff’s continued failure to  
10 comply with the Federal Rules of Civil Procedure is becoming more and more  
11 burdensome and costly for Defendant. Nevertheless, Defendant now opposes  
12 Plaintiff’s motion to amend and renews Defendant’s request for oral argument on the  
13 motion to amend the Complaint.

14 **TIME TO ANSWER AN AMENDED COMPLAINT**

15 Plaintiff seeks to assert new causes of action, an additional plaintiff and an  
16 individual named defendant. However, Plaintiff’s amendment of his Complaint  
17 will subject Defendant to an evaluation and analysis of several entirely new causes  
18 of action including, but not limited to, new allegations drawn on Washington State  
19 Criminal Statutes and the CAN-SPAM Act of 2003 (“CAN-SPAM”). Putting aside  
20 the fact that such new causes of action would be futile, the proposed addition of a  
21 new plaintiff, Omni Innovations, LLC, will require duplicative discovery and motion  
22 practice and would substantially prejudice Defendant.

23 **MOTION PRACTICE EXPECTED**

24 Should the Court grant Plaintiff leave to amend his Complaint, Defendant  
25 anticipates filing a dispositive motion to dismiss Plaintiff’s new baseless causes of  
26 action. In fact, by conducting a reasonable investigation into the merits of his new  
27 allegations, as federal law mandates, Plaintiff would have understood that his new  
28 causes of action are entirely without merit.

1 Further, Plaintiff has not demonstrated that Plaintiff can prove that any email  
2 was sent by the Defendant or that email violating any aspect of RCW 19.190 et seq.  
3 was sent with the knowledge of Defendant or that Defendant consciously avoided  
4 knowing that email violating any aspect of RCW 19.190 et seq. was transmitted.

5 As such, in addition to a dispositive motion to dismiss Plaintiff's new causes  
6 of action should leave to amend be granted, Defendant anticipates moving for  
7 sanctions and costs against Plaintiff.

8 **CROSS-MOTION TO COMPEL**

9  
10 What is even more troublesome than the prejudicial effect of Plaintiff seeking  
11 to amend his Complaint, is the fact that Plaintiff has failed to sufficiently respond to  
12 Defendant's First Set of Interrogatories and Document Requests, subjecting Defendant  
13 to unnecessary costs associated with trying to resolve discovery issues between the  
14 parties short of this Court's intervention.

15  
16 In fact, at the Court's direction, we "met and conferred" with Plaintiff on several  
17 occasions in connection with discovery. In good faith, on March 3, 2006, March 14,  
18 2006 and April 13, 2006, Defendant reiterated its views to Plaintiff regarding  
19 Plaintiff's outstanding discovery obligations. Plaintiff's continued insistence that the  
20 burden to ascertain the alleged statutory violations is somehow shared equally between  
21 the parties, effectively ignores the fact that Plaintiff must establish Defendant's alleged  
22 statutory violations by the preponderance of the evidence.  
23  
24  
25

26 To date, Plaintiff has failed to properly provide Defendant with sufficient  
27 discovery responses including, but not limited to, the following: (1) a document  
28

1 production that is sequentially numbered/Bates Stamped, in the lower left margin, in  
2 compliance with Local Rule 10.1 including, but not limited to, (2) answering each  
3 portion of Plaintiff's "analysis" by specifically correlating, in a usable fashion, with  
4 the Bates Stamped document to which it corresponds; and (3) a complete written  
5 response to each Interrogatory<sup>1</sup>.  
6  
7

8 As Defendant continues to reiterate to Plaintiff, each email represents a unique  
9 cause of action, every element of which must be proven. Each will have a distinct  
10 defense. Obviously, Defendant will need to know, with specificity, why Plaintiff  
11 contends that each email allegedly violates the Washington statute. By sufficiently  
12 responding to Defendant's discovery requests, both parties will then be in a better  
13 position to determine whether any of Plaintiff's claims can simply be  
14 withdrawn in advance and/or whether their can be any "grouping" for purpose of trial  
15 as suggested by the Court. Moreover, at that point, providing Interrogatory responses  
16 satisfactory to each party should be somewhat simpler. Plaintiff argues that somehow  
17 Defendant's request for sufficient discovery responses in the above-mentioned fashion  
18 constitutes "trial preparation" and is therefore "unreasonable and improper."  
19 However, such an argument is a bad faith attempt to protect Plaintiff from spending  
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25 <sup>1</sup> For example, the Responses to Interrogatories #7 and #10 must fully detail Plaintiff's  
26 contention/allegation of how each individual email, whether transmitted by Defendant or by a third  
27 party on Defendant's behalf, allegedly: a) misrepresented or obscured information identifying the  
28 point or origin of the email; b) misrepresented or obscured information identifying the transmission  
path of the email; and/or c) contained false or misleading information in the subject line of the  
email.

1 time and money in proving his case. In fact, Plaintiff's false contention is not in  
2 accordance with the Federal Rules of Civil Procedure.  
3

4 Accordingly, Defendant hereby cross-moves for an order to compel Plaintiff to  
5 sufficiently respond to Defendant's discovery demands in the manner described  
6 herein, or as this Court shall require.  
7

8 Alternatively, Defendant proposes to re-note Defendant's original Motion to  
9 Compel for hearing contemporaneous with the hearing of Plaintiff's Motion to  
10 Amend, or to re-note the Motion shortly thereafter and seeks sanctions for Plaintiff's  
11 continued failure to provide Defendant with sufficient discovery after Defendant's  
12 repeated attempts to resolve these discovery issues short of this Court's intervention.  
13 Defendant is prejudiced by Plaintiff's failure to respond to Defendant's Discovery.  
14  
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16 **NEWLY REVEALED PROPOSED PLAINTIFF**  
17

18 Plaintiff intends to name Omni Innovations, LLC as an additional plaintiff.  
19 While Defendant is unaware of this entity, permitting such a new plaintiff to enter this  
20 case, at this juncture of the litigation, would require Defendant to duplicate its recent  
21 case work in addressing this entity as a new plaintiff. Defendant believes that naming  
22 Omni Innovations LLC is substantially prejudicial to the Defendant and urges the  
23 Court to deny Plaintiff's Motion relative to adding an additional Plaintiff.  
24  
25

26 **RESCHEDULING**  
27

28 Should the Court grant Plaintiff's motion to amend his Complaint, this case

1 should be rescheduled given that Defendant will require reasonable time to analyze,  
2 evaluate and respond to Plaintiff's Amended Complaint.  
3

4  
5 DATED this 18th day of April, 2006.

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

7  
8 By s/ FLOYD E. IVEY

9 FLOYD E. IVEY, WSBA#6888  
10 Attorneys for Defendant  
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16 S/ SEAN MOYNIHAN & PETER J. GLANTZ

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23  
24  
25 I hereby certify that on April 18, 2006, I electronically filed DEFENDANT'S  
26 OBJECTION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT AND  
27 RENOTING OF DEFENDANT'S MOTION TO COMPEL with the Clerk of the  
28 Court using the CM/ECF System which will send notification of such filing to  
Robert Siegel, Peter J. Glantz and Sean A. Moynihan. I hereby certify that I have

1 served the foregoing to the following non-CM/ECF participants by other means:  
2 Bonnie Gordon, Jonathan Gordon, James S. Gordon, III, Robert Pritchett, Jamila  
3 Gordon and Emily Abbey.

4 S/ FLOYD E. IVEY  
5 FLOYD E. IVEY

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