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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAY 19 2006

JAMES R. LARSEN, CLERK
DEPUTY
RICHLAND, WASHINGTON

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
OF WASHINGTON AT RICHLAND

James S. Gordon, Jr., Plaintiff,

v.

Impulse Marketing Group, Inc.,

Defendant

Impulse Marketing Group, Inc.,

Jeffrey P. Goldstein, Gregory

Greenstein, Kenneth Adamson, Phillip

Huston, and John Doe spammers 1-50,

Third-Party Plaintiffs,

v.

Emily Abbey, Third-Party Defendant

TO: Clerk of the Court

AND TO: Floyd E. Ivey, Attorney for Third-Party Plaintiff

AND TO: Peter J. Glantz and Sean A. Moynihan

Case No.: CV-04-5125-FVS

RESPONSE TO IMPULSE'S MEMO
OF LAW IN SUPPORT OF MOTION
TO DISMISS THIRD PARTY
DEFENDANT'S AMENDED
COUNTERCLAIMS

Introduction

1
2 Mr. Ivey has made it crystal clear that he will not contact Plaintiff even
3 though Mr. McKinley and Mr. Siegel have provided him with written permission
4 to do so. As I am proceeding "Pro Se", there is no reason or excuse for him to
5 refuse to contact or conference with me.

6 In the normal course of events when both sides are represented by counsel,
7 disputes can be resolved wholly or in part via communication between the parties.
8 Impulse's attorneys have refused to communicate with third parties. A letter or two
9 threatening me with sanctions are the only communications that I have received.
10 This strident posturing is difficult to decipher as the seemingly altruistic notion of
11 precluding sanctions is couched in terms which include allegations of wrongdoing
12 on my part.

13 Thus there is no justification for expending scores of hours on "research",
14 etc. when a simple phone call and email or a letter can reduce the need for the
15 waste of Court resources and its client's resources. If Impulse were really
16 concerned with my welfare it would extend me the courtesy or opportunity to
17 discuss my claims with it. Impulse's refusal to bargain in good faith negates any
18 entitlement to sanctions as its assertion to same coupled with its refusal to dialog
19 with us are designed only to harm third parties.

Clarifications Regarding Amended Counterclaims

20
21 The undersigned is withdrawing each counterclaim which is properly
22 invoked by the state rather than a private citizen. However, I re-assert my
23 counterclaims regarding RCW 19.190, RCW 19.86, Permanent Injunction, and the
24 intentional infliction of emotional distress. As to the criminal matters addressed in
25 my counterclaims, I will discuss this with other third parties and perhaps meet with

1 local police and the district attorney's office concerning the redress of these
2 complaints.

3 **Response to Memorandum by Impulse**

4 This Court's "Order Denying Defendant's Motion to Dismiss" dated July 11,
5 2005 is instructive as to third party defendant's claims under RCW 19.190 and
6 RCW 19.86.

7 In the section entitled "Standard of Review", this Court stated that:

8 A complaint should not be dismissed for failure to state a claim upon
9 which relief may be granted under Federal Rule of Civil Procedure
10 12(b)(6) unless it "appears beyond doubt that the plaintiff can prove
11 no set of facts in support of his claim which would entitle him to
12 relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-02, 2
13 L.Ed.2d 80 (1957); *Johnson v. Knowles*, 113 F.3d 1114, 1117 (9th
14 Cir. 1997).

15 The only differences between Plaintiff's complaint (which survived
16 Impulse's motion to dismiss) and my complaint are that I actually included an
17 offending email in my pleadings and my domain name is different. The referenced
18 email was sent in violation of the referenced statutes and it contains highlights
19 which provide detail as to the specific areas wherein the emails violate the statutes.

20 When the legal sufficiency of a complaint's allegations are tested with
21 a motion under Rule 12(b)(6), "[r]eview is limited to the complaint."
22 *Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir. 1993). All
23 factual allegations set forth in the complaint are taken as true and
24 construed in the light most favorable to the plaintiff. *Epstein v. Wash.*
25 *Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996). The Court must give
the plaintiff the benefit of every inference that reasonably may be
drawn from well-pleaded facts. *Tyler v. Cisneros*, 136 F.3d 603, 607
(9th Cir. 1998). As a general rule, the Court "may not consider any
material beyond the pleadings in ruling on a Rule 12(b)(6) motion."
Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001).

1 My complaint may or may not be well-pled, but as a matter of law and
2 equity, it should be taken in the light most favorable... The email provided by me
3 is the best evidence of violations of RCW 19.190 and RCW 19.86. The highlighted
4 errors and omissions are a matter for expert witnesses and testimony. In this case,
5 the proverbial picture of the violations is worth more than the 1000s of words
6 proffered by Impulse.

7 There is no question as to whether or not the email exhibit is an email. The
8 only question, for a trier of fact, is whether or not it violates the referenced statutes.
9 This fact is a point of controversy, which can not be adequately addressed in or by
10 Impulse's motion to dismiss. Thus, my complaint when taken as true... favorable
11 light survives this 12(b)(6) motion to dismiss.

12 Response to XIII...RCW 19.190 et seq

13 Impulse claims that I have not alleged any factual allegations relating to
14 violations of RCW 19.190 et seq. It goes on to say that "unsupported conclusions
15 of law in a complaint are not sufficient to withstand a motion to dismiss".

16 In addition to incorporating the email dated March 22, 2006 by reference, I
17 believe that that email violates Washington law in the following manner:

18 **RCW 19.190.020 - Unpermitted or misleading electronic mail -- 19 Prohibition.**

20 (1) No person may initiate the transmission, conspire with another to
21 initiate the transmission, or assist the transmission, of a commercial
22 electronic mail message from a computer located in Washington or to
23 an electronic mail address that the sender knows, or has reason to
24 know, is held by a Washington resident that:

25 (a) Uses a third party's internet domain name without permission of
the third party, or otherwise misrepresents or obscures any
information in identifying the point of origin or the transmission path
of a commercial electronic mail message; or

(b) Contains false or misleading information in the subject line.

1 (2) For purposes of this section, a person knows that the intended
2 recipient of a commercial electronic mail message is a Washington
3 resident if that information is available, upon request, from the
4 registrant of the internet domain name contained in the recipient's
5 electronic mail address.

6 **RCW 19.190.030 Unpermitted or misleading electronic mail --**
7 **Violation of consumer protection act.**

8 (1) It is a violation of the consumer protection act, chapter 19.86
9 RCW, to conspire with another person to initiate the transmission or
10 to initiate the transmission of a commercial electronic mail message
11 that:

12 (a) Uses a third party's internet domain name without permission of
13 the third party, or otherwise misrepresents or obscures any
14 information in identifying the point of origin or the transmission path
15 of a commercial electronic mail message; or

16 (b) Contains false or misleading information in the subject line.

17 (2) It is a violation of the consumer protection act, chapter 19.86
18 RCW, to assist in the transmission of a commercial electronic mail
19 message, when the person providing the assistance knows, or
20 consciously avoids knowing, that the initiator of the commercial
21 electronic mail message is engaged, or intends to engage, in any act or
22 practice that violates the consumer protection act.

23 (3) The legislature finds that the practices covered by this chapter are
24 matters vitally affecting the public interest for the purpose of applying
25 the consumer protection act, chapter 19.86 RCW. A violation of this
chapter is not reasonable in relation to the development and
preservation of business and is an unfair or deceptive act in trade or
commerce and an unfair method of competition for the purpose of
applying the consumer protection act, chapter 19.86 RCW.

Impulse's emails to me have illegal transmission paths, use misleading
subject lines, and are sometimes relayed through others' computers. The
referenced email sent by Impulse violates these prohibitions in RCW 19.190 and
RCW 19.86.

THEREFORE, third party defendant moves this Court to deny Impulse's request for dismissal of my four counterclaims listed above. Again, I have withdrawn the claims that only a government entity can prosecute.

Emily Abbey, Pro Se
1407 2nd Ave. W. #608
Seattle, WA 98119
206-217-0466

EXECUTED this 19th day of May, 2006.

Emily H Abbey

Certificate of Service

I, hereby, certify that on May 19th 2006, I filed this motion with this Court. I have served Bob Siegel, Peter J. Glantz, Sean A. Moynihan, Floyd E. Ivey, Jamila Gordon, James Gordon III, Jonathan Gordon, Bonnie Gordon, and Robert Pritchett by other means.

[Signature]