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14 **IN THE UNITED STATES DISTRICT COURT**
 15 **FOR THE EASTERN DISTRICT OF WASHINGTON**
 16 **AT RICHLAND**

17 James S. Gordon, Jr.,
 18 Plaintiff,
 19 v.
 20 Impulse Marketing Group, Inc.,
 21 Jeffrey Goldstein, Phillip Huston,
 22 and Kenneth Adamson,
 23 Defendants.

Case No.: CV-04-5125-FVS

DEFENDANT'S
 MEMORANDUM IN
 OPPOSITION TO
 PLAINTIFF'S MOTION TO
 COMPEL

For Resolution by Discovery Master
 The Hon. Harold D. Clarke

24 Impulse Marketing Group, Inc.,
 25 Third-Party Plaintiff,
 26 v.
 27 Bonnie F. Gordon, Jamila Gordon,
 28 James Gordon, III, and Jonathan
 Gordon,
 Third-Party Defendants.)

Defendant Impulse Marketing Group, Inc. (hereinafter, "Defendant" or "Impulse"), by and through its counsel, Klein, Zelman, Rothermel & Dichter,

DEFENDANT'S OPPOSITION TO
 PLAINTIFF'S MOTION TO COMPEL-1
 00079495;1

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1 L.L.P., hereby submits this memorandum in opposition to Plaintiff James S.
2 Gordon's (hereinafter, "Plaintiff" or "Gordon") motion to compel.

4 I. STATEMENT OF FACTS

5 The instant action is a prototypical coercion lawsuit. The action was
6 commenced by the filing of a summons and complaint on November 23, 2004
7 (the "Original Complaint"). (Moynihan Decl. ¶ 2.) The Original Complaint
8 was rife with vague, ambiguous allegations that Impulse had violated "at least
9 one" prohibition of RCW 19.190 *et seq.* (collectively referred to as "CEMA").
10 (Compl. ¶¶ 3.7, 3.9 and 3.12.) In addition, Plaintiff's allegations were
11 frequently separated by the term "and/or," leaving Impulse to guess as to what
12 provision of CEMA it was alleged to have violated. (Compl. ¶¶ 3.7.1, 3.7.2,
13 3.9.1, 3.9.2, 3.12.1 and 3.12.2.) Plaintiff refuses, either in his pleadings or
14 discovery, to identify how Defendant allegedly violated CEMA. (Moynihan
15 Decl. ¶ 3.) Further complicating matters, the Original Complaint failed to
16 specify either a time frame during which such violations were alleged to have
17 occurred, or the number of emails alleged to have been sent by Impulse in
18 violation of CEMA. (Moynihan Decl. ¶ 4.) Now, nearly two (2) years into
19 the action, Defendant is no closer to knowing what specific claims are being
20 lodged against it. The one fact about which both parties appear to agree, is
21 that, upon information and belief, Defendant did not send email messages to
22 the email addresses at issue. (Moynihan Decl. ¶ 4.) The foregoing material
23 omissions make it virtually impossible for Impulse to defend this action. It
24 seems that all of this is intended to impose a tremendous transactional cost on
25 Defendant in an attempt to coerce Defendant to settle, with the alternative
26 being the expenditure of huge sums on its defense.

1 In an attempt to divine the precise allegations contained in Plaintiff's
2 Original Complaint, and the factual bases thereof, Impulse served its initial
3 discovery requests on or about December 23, 2005. (Moynihan Decl. ¶ 6.)
4 On or about February 15, 2006, Impulse's local counsel, Floyd Ivey, Esq.,
5 wrote to Plaintiff's counsel¹ inquiring as to the status of the overdue responses
6 and requesting that such responses be served by February 24, 2006 or, in the
7 alternative, that the parties meet and confer pursuant to LR 37.1 on either
8 February 15, February 16 or February 17. (Moynihan Decl. ¶ 7.) Subsequent
9 to the February 15 correspondence, Impulse was notified by Plaintiff's counsel
10 that he intended to withdraw his representation of Plaintiff in the action.
11 (Moynihan Decl. ¶ 8.) At that time, Impulse requested that Mr. McKinley, Jr.,
12 Esq. relay its demand to either receive discovery responses by February 24,
13 2006 or, in the alternative, to meet and confer pursuant to LR 37.1 on any one
14 of the several dates previously specified. (Moynihan Decl. ¶ 9.)

15 On February 21, 2006, when Impulse had received neither a notice of
16 substitution of counsel, discovery responses, nor a response to its request to
17 meet and confer, Defendant filed an expedited motion to compel. (Moynihan
18 Decl. ¶ 10.) Immediately following the filing of Defendant's motion, on or
19 about February 22, 2006, Plaintiff, by and through his newly substituted
20 counsel,² Robert Siegel, Esq., served his initial response to Defendant's
21 interrogatories and document requests. (Moynihan Decl. ¶ 11.) Plaintiff's
22 purported responses were so evasive and incomplete as to be considered non-

23
24 ¹At the time of the February 15, 2006 correspondence, Plaintiff was represented by
25 Douglas E. McKinley, Jr., Esq.

26 ²Notice of Withdrawal and Consent to Substitution of Counsel was finally filed by
27 Plaintiff on or about March 3, 2006. (Moynihan Decl. ¶ 11.)

1 responsive, and shed no light on the allegations contained in Plaintiff's Original
2 Complaint.³ Thus, on or about February 23 and March 3, Defendant
3 identified the deficiencies contained in Plaintiff's discovery responses, and asked
4 that Plaintiff's counsel advise of any intention or ability to respond more fully.
5 (Moynihan Decl. ¶ 12.) To date, Plaintiff has steadfastly refused to properly
6 respond to Defendant's discovery requests and has repeatedly reiterated that he
7 will not disclose how Defendant allegedly violated the statute, instead telling
8 Defendant to "figure it out" for itself. (Moynihan Decl. ¶ 13.) On or about
9 March 9, 2006, this Court entered an order denying Defendant's motion to
10 compel due to the fact that Mr. Siegel had only recently been retained as new
11 counsel. (Moynihan Decl. ¶ 14.) The Court did, however, allow Defendant
12 leave to renew if the parties were unable to resolve their discovery disputes.
13 (Moynihan Decl. ¶ 14.)

14 On or about March 2, 2006, Plaintiff served his first interrogatories and
15 requests for production of documents. (Moynihan Decl. ¶ 15.) Such requests
16 were frequently overbroad, vague and ambiguous, often (as with the Original
17 Complaint) failed to include a relevant time period for which Plaintiff was
18 seeking requested information and/or documents, and were not even limited to
19 the broad, undefined allegations in the Original Complaint. (Moynihan Decl.
20 ¶ 15.) Further, many of Plaintiff's requests, discussed *infra* Part II.B., were
21 patently irrelevant and, in many instances, requested confidential commercial
22 information. (Moynihan Decl. ¶ 15.) Counsel for both parties exchanged
23 correspondence related to outstanding discovery disputes on or about March 3,
24

25
26 ³Defendant is in the process of preparing its own motion to compel and anticipates
filing such motion in the coming weeks.

1 March 14 and April 14, 2006. (Moynihan Decl. ¶ 16.) At each and every
2 instance, Defendant reiterated its inability to fully respond to Plaintiff's
3 discovery requests due to: 1) Plaintiff's assertion of vague and impossible to
4 ascertain allegations in his Original Complaint; and 2) Plaintiff's refusal to
5 provide meaningful responses to Defendant's discovery requests. (Moynihan
6 Decl. ¶ 17.) Notwithstanding the foregoing, on or about April 24, 2006,
7 Defendant served its initial response to Plaintiff's discovery requests.
8 (Moynihan Decl. ¶ 18.) Contrary to Plaintiff's assertions in his motion to
9 compel, Defendant does not wish to prolong this action. Defendant merely
10 seeks to have the claims against it, and the discovery requests propounded by
11 Plaintiff, reasonably defined so as to enable a meaningful response. This is
12 evidenced in repeated correspondence from Defendant's counsel to Plaintiff,
13 including correspondence on April 26 and May 9, 2006. (Moynihan Decl.
14 ¶ 19; Ex. A.)

15 Finally, on or about May 9, 2006, counsel for both parties conferred
16 regarding the ongoing discovery disputes. Although Plaintiff continued to
17 refuse to craft more appropriate discovery requests, both parties agreed to
18 reconsider their prior discovery responses and to provide supplemental
19 responses. (Moynihan Decl. ¶ 20.) On or about May 9, 2006, Plaintiff
20 produced yet another CD-ROM of unusable information, and on or about
21 June 1, 2006, Plaintiff supplemented his written responses to a fragment of
22 Defendant's requests. (Moynihan Decl. ¶ 21.) Defendant, still grasping at
23 straws in an attempt to determine both the number of emails it is alleged to
24 have sent and in what way, if at all, each unique email is alleged to have
25 violated CEMA, served its supplemental response to Plaintiff's interrogatories
26 on or about June 9, 2006. (Moynihan Decl. ¶ 22.) Plaintiff repeatedly

1 attempts to mislead this Court by stating that he has provided a “detailed
2 analysis of the offending emails.” (Pl.’s Mot. Compel 3.) In fact, to date, what
3 Plaintiff has actually produced is three (3) pages of evasive and incomplete
4 written responses to Defendant’s discovery requests and four (4) CD-ROMs of
5 indecipherable nonsense in direct contradiction to the mandates of both the
6 Federal Rules of Civil Procedure and the Local Rules of this Court.

7 (Moynihan Decl. ¶ 23; Ex. B.) Plaintiff’s “detailed analysis” consists of
8 highlighted portions of emails without stating: 1) any basis for Plaintiff’s belief
9 that the email was initiated by Impulse; 2) the specific provision(s) of CEMA
10 each unique email is alleged to violate; or 3) what is allegedly improper about
11 any email at issue. (Moynihan Decl. ¶ 26; Ex. B.) Counsel for both parties
12 again exchanged correspondence relating to the discovery disputes on June 20
13 and June 27, 2006, and again, such correspondence yielded no resolution.

14 (Moynihan Decl. ¶ 28.) On or about July 24, 2006, Plaintiff filed the instant
15 motion to compel. On or about August 11, 2006, Impulse served its Second
16 Supplemental Response to Plaintiff’s First Interrogatories and Requests for
17 Production, including information regarding how Defendant believes Plaintiff
18 may have opted-in to a third party’s email marketing list. (Moynihan Decl. ¶
19 29; Ex. C.)

20 To further complicate the issues, in the midst of the ongoing discovery
21 dispute, on or about June 13, 2006, Plaintiff filed his first amended complaint
22 naming three (3) new defendants and adding new causes of action (the
23 “Amended Complaint”). (Moynihan Decl. ¶ 27.) Plaintiff’s filing only further
24 delays the trial schedule and makes this motion to compel a waste of the
25 Court’s time insofar as Defendant intends to move to dismiss the Amended
26 Complaint or move in the alternative for a more definite statement.

1 Subsequent to this Court's ruling on Defendant's forthcoming motion,
2 discovery will begin anew for those parties and causes of action, if any, that
3 remain. As such, the prior scheduling order has been stricken by this Court,
4 and Plaintiff is facing no deadline for discovery.

6 II. DISCUSSION

7 A. Complaint Lacks Sufficient Detail to Enable Defendant 8 to Identify the Claims Asserted & Plaintiff's Discovery 9 Responses Provide No Clarification

10 If Plaintiff refuses to identify the specific claims being asserted against
11 Defendant, and the factual bases thereof, how is Defendant to ascertain where
12 to locate information responsive to discovery requests propounded by Plaintiff
13 in relation to such unidentifiable claims? The Original Complaint, discussed
14 *infra* Part I, consisted of vague and imprecise blanket allegations that
15 Defendant violated "at least one" provision of CEMA. (Compl. ¶¶ 3.7, 3.9
16 and 3.12.) Nowhere in the Original Complaint does Plaintiff indicate the
17 number of emails alleged to have been sent by Defendant, the manner in which
18 each such email is alleged to have violated CEMA, or even the specific
19 provision of CEMA alleged to have been violated. (Moynihan Decl. ¶¶ 3, 4.)

20 In fact, contrary to the express provisions of Fed. R. Civ. P. 11(b), when
21 Defendant's counsel inquired some months ago, Plaintiff's counsel indicated
22 that he has only reviewed a handful of the allegedly thousands of emails in
23 question. (Moynihan Decl. ¶ 5.) An attorney has an affirmative duty to make
24 a reasonable pre-filing inquiry into both the facts and the law before signing and
25 submitting any pleading, motion, or other paper. Fed. R. Civ. P. 11(b)
26 advisory committee's note; see Buster v. Greisen, 104 F.3d 1186, 1189-90 (9th
27 Cir. 1997); see also Estate of Blue v. County of Los Angeles, 120 F.3d 982,

1 985 (9th Cir. 1997) (sanctions were proper when a reasonable inquiry would
2 have revealed that the claim was barred by statute of limitations). “The
3 standard is one of reasonableness under the circumstances . . . This standard is
4 more stringent than the original good-faith formula” Lloyd v. Schlag,
5 884 F.2d 409, 412 (9th Cir. 1989) (citing Fed.R.Civ.P. 11 advisory
6 committee’s notes); see Rachel v. Banana Republic, Inc., 831 F.2d 1503, 1508
7 (9th Cir. 1987) (counsel has affirmative duty of investigation into law and fact
8 before filing); see Hudson v. Moore Bus. Forms, Inc., 836 F.2d 1156, 1159
9 (9th Cir.1987) (to determine whether the inquiry actually conducted was
10 adequate, the court applies a standard of “objective reasonableness under the
11 circumstances”). In fact, it can be argued that all available documents that are
12 relevant to the case should be examined prior to filing a pleading, motion, or
13 other paper. See Ins. Benefit Adm'rs, Inc. v. Martin, 871 F.2d 1354, 1357
14 (7th Cir. 1989) (where available documents contradicted asserted claim).
15 Here, each email alleged to have been sent by Defendant in violation of CEMA
16 constitutes a separate transaction and, therefore, a separate claim. Plaintiff’s
17 counsel’s inability or unwillingness to explain the factual basis for Plaintiff’s
18 thousands of claims is indicative of counsel’s failure to conduct a reasonable
19 prefiling investigation into the underlying facts and law in this case, and
20 Plaintiff’s scheme to transfer any and all transactional costs to Defendant.

21 When, through discovery, Defendant attempted to obtain information
22 and documents, including the offending emails alleged to have been sent by
23 Defendant, Plaintiff produced three (3) pages of evasive and incomplete
24 written responses to Defendant’s discovery requests and referred Defendant to
25 four (4) CD-ROMs. (Moynihan Decl. ¶ 23.) Plaintiff failed, however, to
26 properly specify, pursuant to Fed. R. Civ. P. 33 and 34, to which interrogatory

1 and/or document request each item of information contained on the CD-
2 ROMs was responsive. (Moynihan Decl. ¶ 24.) In addition, as is the case
3 here, “[i]f computer-based information is produced in a format unuseable by
4 the requesting party, information necessary to understand it must also be
5 produced.” 7 James Wm. Moore, et al., Moore’s Federal Practice § 37A.12[3]
6 (3d ed. 2006). Plaintiff’s CD-ROMs containing purported discovery
7 responses, totaling approximately 614,247,996 bytes (approximately 213,406
8 pages), were frequently unreadable, unusable and indecipherable, and Plaintiff
9 has refused to provide the information in a usable format. (Moynihan Decl. ¶
10 25.) Such unresponsive discovery responses severely prejudice Impulse’s ability
11 to defend this action and/or to provide more meaningful discovery responses.
12 Defendant’s stance is simple and has been repeatedly conveyed to Plaintiff—tell
13 Defendant what it allegedly did wrong so that Defendant can meaningfully
14 respond to discovery. (Moynihan Decl. ¶ 19; Ex. A.) Plaintiff’s deliberate
15 misuse of the discovery process is accomplishing its intended purpose and is
16 becoming increasingly burdensome and harassing.

17
18 B. Plaintiff’s Discovery Requests do not Satisfy the
19 Relevance and Proportionality Requirements of Fed. R. Civ. P. 37

20 “The right of a party to obtain discovery is not unlimited.” Epstein v.
21 MCA, Inc., 54 F.3d 1422, 1423 (9th Cir. 1995). When ruling on a motion to
22 compel, courts must consider both the relevance standard and the
23 proportionality requirements contained within Federal Rule of Civil Procedure
24 26. 7 James Wm. Moore, et al., Moore’s Federal Practice § 37.22[2][a] (3d
25 ed. 2006).

26 In 2000, the relevance standard outlined in Fed. R. Civ. P. 26(b)(1) was

1 amended, providing that “[p]arties may obtain discovery regarding any matter,
2 not privileged, that is relevant to the claim or defense of any party” Fed.
3 R. Civ. P. 26(b)(1) (emphasis added). The intent of the new, more narrow
4 standard, was for the parties and the court to focus on the actual claims and
5 defenses involved in the action. 7 James Wm. Moore, et al., Moore’s Federal
6 Practice § 37.22[2][b] (3d ed. 2006).

7 Evaluating Plaintiff’s First Interrogatories and Requests for Production
8 of Documents (“First Discovery Request”) and his subsequently served First
9 and Second Requests for the Production of Documents (collectively,
10 “Document Requests”), it is clear that Plaintiff fails to satisfy the relevance
11 standard set forth in Fed. R. Civ. P. 26(b)(1). Without limiting Defendant’s
12 irrelevancy objections already interposed in its discovery responses, Defendant
13 respectfully refers the Court to Interrogatory No. 4, asking Defendant to
14 identify its “gross revenue for any and all years that [D]efendant has marketed
15 products and/or services via email.” (Pl.’s Interrogs. 10.) Defendant’s gross
16 revenue is irrelevant to Plaintiff’s statutory claims insofar as gross revenue is
17 neither an element in a damages calculation under CEMA, nor is it relevant to
18 claims that Defendant sent commercial email to the email addresses at issue in
19 this action. Similarly, Defendant specifically objected to Request for
20 Production No. 5, requesting “all state, and federal tax returns filed by the
21 defendant for the tax years 2002 to present” (Pl.’s First Reqs. Prod.
22 Docs. 11.) Such information and documentation has been held by the courts
23 of this Circuit to be totally irrelevant to claims such as Plaintiff’s for damages.
24 In fact, revenue that may have been received by a defendant as a result of
25 alleged activity in violation of CEMA and/or the Washington Consumer
26 Protection Act is not a figure used in the calculation of either the statutory or

1 treble damages that may be available. Moreover, it is certainly “substantially
2 justifiable” to argue that demanding tax returns, “monthly, quarterly, or yearly
3 profit and loss statements or balance sheets . . . for the period between 2002
4 and the present” (Pl.’s First Reqs. Prod. Docs. 11), wholly unrelated to
5 commercial email activities is not likely to lead to admissible evidence. The
6 court in Kayner v. City of Seattle, 2006 WL 482072 (W.D. Wash.) specifically
7 rejected the argument that such materials were relevant, finding it to be vague
8 and finding no compelling need for the materials sought given that such
9 information could be obtained through less obtrusive means. Id. at *2. In
10 fact, “the Ninth Circuit recognizes ‘a public policy against unnecessary public
11 disclosure [of tax returns] . . .” Id. at *1 (quoting Aliotti v. Senora, 217 F.R.D.
12 496, 497 (N.D. Cal. 2003) (holding that although plaintiff’s tax returns were
13 relevant, defendant had not met its burden of establishing a compelling need)
14 (quoting Premium Serv. Corp. v. Sperry & Hutchinson Co., 511 F.2d 225,
15 229 (9th Cir. 1975))). Finally, Plaintiff’s Interrogatory Nos. 5, 6, asking
16 Defendant to identify the aggregate number of email addresses to which it has
17 ever marketed products and/or services and the number of those email
18 addresses that are opt-in email addresses, respectively (Pl.’s Interrogs. 10), are
19 not relevant to Plaintiff’s claim that Defendant sent commercial email to the
20 specific email addresses at issue in this action. Any information gleaned from
21 these interrogatories would have no bearing on either the merits of the case or
22 the measure of damages.

23 Pursuant to the proportionality requirements, even when the discovery
24 sought is relevant and not privileged, a motion to compel must be denied if: 1)
25 the discovery sought is unreasonably cumulative or duplicative; 2) the
26 discovery sought is obtainable from some other source that is more convenient,

1 less burdensome, or less expensive; 3) the party seeking the discovery has had
2 ample opportunity by discovery in the action to obtain the information sought;
3 or 4) the burden or expense of the proposed discovery outweighs its likely
4 benefit, taking into account the needs of the case, the amount in controversy,
5 the parties' resources, the importance of the issues at stake in the litigation, and
6 the importance of the proposed discovery in resolving the issues. Fed. R. Civ.
7 P. 26(b)(2); *see also* Fed. R. Civ. P. 26(g)(2)(c). As discussed herein, Plaintiff's
8 Discovery Requests and Document Requests are largely irrelevant to its claims
9 in this action. Even, assuming *arguendo*, that this Court were to find that
10 Plaintiff's Discovery Requests and Document Requests are relevant, Plaintiff's
11 motion must still be denied because the burden or expense of the proposed
12 discovery outweighs its likely benefit. Plaintiff's has refused to narrow overly
13 broad interrogatories, such as Interrogatory No. 13 (asking Defendant to
14 "identify any person or entity, including vendors, agents, affiliates, contractors,
15 and subcontractors, that assists or assisted in the transmission of commercial
16 email on defendant's behalf for the past five years" (Pl.'s Interrogs. 14)) and
17 Interrogatory No. 23 (asking Defendant to identify all individuals who have
18 worked for it from January 1, 2002 to the present (Pl.'s Interrogs. 18-19)).
19 Plaintiff's Interrogatory No. 13 fails to define the term "assist" and fails to limit
20 the scope of the interrogatory to emails sent to the email addresses at issue in
21 the pleadings, while Interrogatory No. 23 would necessarily require Defendant
22 to identify, *inter alia*, receptionists, secretaries and janitors that may have been
23 employed by Defendant during the past four and one-half years. Similarly, the
24 moving party in Safeco of America v. Rawstron, 181 F.R.D. 441 (C.D. Cal.
25 1998) served broad discovery requests containing no time limitation. The
26 Court in Safeco, in denying movant's motion to compel, chided the moving

1 party regarding its service of the discovery requests, stating that counsel
2 “should have considered these practical problems [in responding to broad
3 discovery requests containing no time limitation] before serving such broad
4 discovery requests, rather than waiting until the inevitable objections were
5 received before trying to salvage the requests by limiting them to what is really
6 needed.” *Safeco, supra* at 448.

7 Further, Plaintiff attempts to mislead the Court by paraphrasing its
8 interrogatories in an attempt to disguise their deficiencies. For example,
9 Plaintiff objects to Defendant’s response to Interrogatory Nos. 7, 17 and 19,
10 telling the Court that it has requested “a list of all domains it has registered,
11 and all IP addresses which have been registered on its behalf, and/or from
12 which they have sent multiple emails.” (Pl.’s Mot. Compel 6.) What Plaintiff
13 has actually requested from Defendant is significantly broader, more
14 ambiguous, time unlimited and irrelevant.^{4,5,6} Clearly Interrogatory Nos. 7, 17
15

16
17 ⁴Interrogatory No. 7 requests Defendant to “list all internet domain names used
18 and/or registered by the defendants, or used or registered on their behalf by others which
19 use the Who is Privacy Protection (Services) Inc. service offered by eNom, Inc., in
20 conjunction with their internet business/activities.” (Pl.’s Interrogs. 11.)

21 ⁵Interrogatory No. 17 asks if Defendant “owns any of the internet domain names
22 from which it sends commercial electronic email? If so, please state as follows: a) All
23 internet domain names you own; and b) All internet domain names that you do not own
24 that you or any person or entity listed in your Answer to Interrogatory 13 send commercial
25 electronic mail from.” (Pl.’s Interrogs. 16.)

26 ⁶Interrogatory No. 19 requests Defendant to “[i]dentify each IP address (or IP
27 address netblock) that the defendant was assigned since 2000” and for each to state “(a) the
28 date it was acquired; (b) whether it is still assigned to or used by the defendant; (c) if not,
the date it was last used; and (d) the reason for the defendant not using it . . .” (Pl.’s
Interrogs. 16-17.)

1 and 19 (quoted in full in fns. 4, 5 and 6), as propounded by Plaintiff, in
2 addition to requesting that Defendant turn over confidential commercial
3 information, fails to satisfy the relevance and proportionality requirements by
4 being time unlimited (excluding Interrogatory No. 19), overbroad and
5 irrelevant insofar as it seeks information about: any and all domain names
6 “used” by Defendant “in connection with their internet business/activities;” “all
7 internet domain names [Defendant] own[s];” and “each IP address” assigned
8 to Defendant, without limiting the request to the allegations contained in the
9 Original Complaint. Plaintiff should be required by this Court to craft
10 appropriate discovery requests that are relevant to the claims (as yet undefined
11 by Plaintiff) at issue in this action.

12 In light of the foregoing, it is clear that Plaintiff has failed to satisfy the
13 relevance standard and proportionality requirements of Federal Rule of Civil
14 Procedure 37, and therefore, any nondisclosure, objection or response by
15 Defendant was substantially justified. As such, Plaintiff’s motion should be
16 denied.

17
18 C. Plaintiff Failed to Comply with the Numerical
19 Limits on Interrogatories Set by E.D. Wash. LR 33.1(b)

20 Under Federal Rule of Civil Procedure 33(a), the number of written
21 interrogatories served by any party upon an adverse party may not exceed
22 twenty-five in number, “including all discrete subparts.” Fed. R. Civ. P. 33(a).
23 The local rules of this Court, however, take a more restrictive approach, stating
24 that absent leave of the court, “[t]he number of interrogatories which may be
25 propounded to any one party by any adverse party shall be twenty-five,
26 including subparts.” E.D. Wash. LR 33.1(b)(emphasis added). Plaintiff’s First

1 Discovery Request contained twenty-five (25) numbered interrogatories,
2 exclusive of subparts. Including subparts, Plaintiff's Discovery Request
3 contained no less than fifty-four (54) requests. Clearly, Plaintiff blatantly failed
4 to comply with the numerical limit set by Local Rule 33.1(b).

5
6 D. Plaintiff Failed to Comply with E.D. Wash. LR 37.1(a)


7 Plaintiff failed to comply with this Court's Local Rule governing the
8 format of motions to compel discovery responses. "Motions to compel
9 answers to interrogatories . . . shall identify and quote in full each interrogatory
10 or question and the answer, if any" E.D. Wash. LR 37.1(a). Plaintiff
11 attempts to shield from the Court the fact that he has failed to draft relevant
12 and appropriate discovery requests by merely summarizing in his motion the
13 information requested in a few of his interrogatories. Specifically, in his
14 motion, Plaintiff objects to Defendant's responses to Interrogatory Nos. 7, 11,
15 12, 13, 17, 18, 19 and 24, but fails to comply with Local Rule 37.1(a) by
16 neglecting to quote in full each interrogatory and Defendant's answer thereto.
17 (Pl.'s Mot. Compel 6-8.)

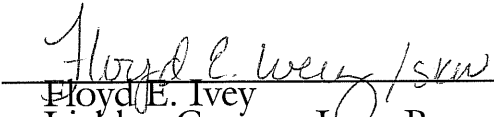
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19 **III. CONCLUSION**

20 Defendant respectfully requests that the Court: 1) deny Plaintiff's
21 motion to compel discovery responses from Defendant; 2) deny Plaintiff's
22 request that it be awarded sanctions against Defendant and costs and fees
23 incurred resolving this discovery issue; and 3) award Defendant its costs and
24 fees incurred in responding to this frivolous and unwarranted motion.

25 RESPECTFULLY SUBMITTED, this 4th day of August, 2006.

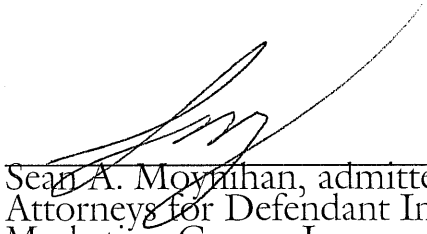
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Certificate of Service

I, hereby, certify that on August 14, 2006, I electronically filed this pleading with this Court. The Clerk of the Court will provide electronic notification system using the CM/ECF, which will send an electronic copy of this Memorandum in Opposition to Plaintiff's Motion to Compel and the Moynihan Declaration in Support of Defendant's Opposition to Plaintiff's Motion to Compel to: Robert J. Siegel and Floyd Ivey. I hereby certify that I have served the forgoing to the following non-CM/ECF participants by other means: The Honorable Harold D. Clarke, Bonnie Gordon, Jonathan Gordon, James S. Gordon, III, Robert Pritchett, Jamila Gordon and Emily Abbey.



Sean A. Moynihan, admitted *pro hac vice*
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